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**LEGISLATIVE COUNSEL
FILE COPY**

FOREIGN SERVICE ACT OF 1980

R E P O R T

OF THE

**COMMITTEE ON POST OFFICE AND
CIVIL SERVICE**

ON

H.R. 6790

**TO PROMOTE THE FOREIGN POLICY OF THE UNITED STATES
BY STRENGTHENING AND IMPROVING THE FOREIGN SERVICE
OF THE UNITED STATES, AND FOR OTHER PURPOSES**



MAY 15, 1980.—Ordered to be printed

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96TH CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 96-
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FOREIGN SERVICE ACT OF 1980

MAY 15, 1980.—Ordered to be printed

Mrs. SCHROEDER, from the Committee on Post Office and Civil Service, submitted the following

REPORT

together with

SUPPLEMENTAL VIEWS

[To accompany H.R. 6790 which on March 12, 1980, was referred jointly to the Committee on Foreign Affairs and the Committee on the Post Office and Civil Service]

[Including cost estimate of the Congressional Budget Office]

The Committee on Post Office and Civil Service, to whom was referred the bill (H.R. 6790) to promote the foreign policy of the United States by strengthening and improving the Foreign Service of the United States, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

AMENDMENTS

The amendments (stated in terms of the page and line numbers of the introduced bill) are as follows:

Page 2, in the item relating to section 209 within the table of contents, strike out "of the Foreign Service".

Page 5, in the table of contents, redesignate the items relating to sections 2305 through 2313 as relating to sections 2306 through 2314, respectively, and insert after the item relating to section 2304 the following:

Sec. 2305. Severance pay.

Page 15, line 9, strike out "of the Foreign Service" and insert in lieu thereof "of the Department of State and the Foreign Service".

Page 18, strike out line 3 and all that follows down through line 10, and insert in lieu thereof the following:

SEC. 202. OTHER AGENCIES UTILIZING THE FOREIGN SERVICE PERSONNEL SYSTEM.—(a) The Director of the International

(1)

Communication Agency and the Director of the United States International Development Cooperation Agency with respect to their respective agencies, the Secretary of Agriculture with respect to the Foreign Agricultural Service, and the Secretary of Commerce with respect to those employees of the Department of Commerce performing functions transferred to the Department of Commerce from the Department of State by Reorganization Plan No. 3 of 1979 may utilize the Foreign Service personnel system in accordance with this Act.

Page 21, beginning on line 15, strike out all of section 209 through line 15 on page 26 and insert in lieu thereof the following:

SEC. 209. INSPECTOR GENERAL.—(a) (1) There shall be an Inspector General of the Department of State and the Foreign Service, who shall be appointed by the President, by and with the advice and consent of the Senate, without regard to political affiliation from among individuals exceptionally qualified for the position by virtue of their integrity, and their demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, investigations, or their knowledge and experience in the conduct of foreign affairs. The Inspector General shall report to and be under the general supervision of the Secretary of State. Neither the Secretary of State nor any other officer of the Department shall prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena during the course of any audit or investigation. The Inspector General shall periodically (at least every 5 years) inspect and audit the administration of activities and operations of each Foreign Service post and each bureau and other operating unit of the Department of State, and shall perform such other functions as the Secretary of State may prescribe, except that the Secretary of State shall not assign to the Inspector General any program operating responsibilities.

(2) The Inspector General may be removed from office by the President. The President shall communicate the reasons for any such removal to both Houses of Congress.

(3) The Inspector General shall, in accordance with applicable law governing the civil service—

(A) appoint an Assistant Inspector General for Auditing who shall have the responsibility for supervising the performance of auditing activities under this section; and

(B) appoint an Assistant Inspector General for Investigations who shall have the responsibility for supervising the performance of investigative activities under this section.

(b) Inspection, investigations, and audits conducted by or under the direction of the Inspector General shall include the systematic review and evaluation of the administration

of activities and operations of Foreign Service posts and bureaus and other operating units of the Department of State, including an examination of—

(1) whether financial transactions and accounts are properly conducted, maintained, and reported;

(2) whether resources are being used and managed with the maximum degree of efficiency, effectiveness, and economy;

(3) whether the administration of activities and operations meets the requirements of applicable laws and regulations and, specifically, whether such administration is consistent with the requirements of section 105;

(4) whether there exist instances of fraud or other serious problems, abuses, or deficiencies, and whether adequate steps for detection, correction, and prevention have been taken; and

(5) whether policy goals and objectives are being effectively achieved and whether the interests of the United States are being accurately and effectively represented.

(c) (1) The Inspector General shall develop and implement policies and procedures for the inspection and audit activities carried out under this section. These policies and procedures shall be consistent with the general policies and guidelines of the Government for inspection and audit activities and shall comply with the standards established by the Comptroller General of the United States for audits of Government agencies, organizations, programs, activities, and functions.

(2) In carrying out the duties and responsibilities established under this section, the Inspector General shall give particular regard to the activities of the Comptroller General of the United States with a view toward insuring effective coordination and cooperation.

(3) In carrying out the duties and responsibilities established under this section, the Inspector General shall report expeditiously to the Attorney General whenever the Inspector General has reasonable grounds to believe there has been a violation of Federal criminal law.

(d) (1) The Inspector General shall keep the Secretary of State fully and currently informed, by means of the reports required by paragraphs (2) and (3) and otherwise, concerning fraud and other serious problems, abuses, and deficiencies relating to the administration of activities and operations administered or financed by the Department of State.

(2) The Inspector General shall, not later than April 30 of each year, prepare and furnish to the Secretary of State an annual report summarizing the activities of the Inspector General. Such report shall include—

(A) a description of significant problems, abuses, and deficiencies relating to the administration of activities and operations of Foreign Service posts, and bureaus and other operating units of the Department of State, which

were disclosed by the Inspector General within the reporting period;

(B) a description of the recommendations for corrective action made by the Inspector General during the reporting period with respect to significant problems, abuses, or deficiencies described pursuant to subparagraph (A);

(C) an identification of each significant recommendation described in previous annual reports on which corrective action has not been completed;

(D) a summary of matters referred to prosecutive authorities and the prosecutions and convictions which have resulted; and

(E) a listing of each audit report completed by the Inspector General during the reporting period.

The Secretary of State shall transmit a copy of such annual report within 30 days after receiving it to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives and to other appropriate committees, together with a report of the Secretary of State containing any comments which the Secretary of State deems appropriate. Within 60 days after transmitting such reports to those committees, the Secretary of State shall make copies of them available to the public upon request and at a reasonable cost.

(3) The Inspector General shall report immediately to the Secretary of State whenever the Inspector General becomes aware of particularly serious or flagrant problems, abuses, or deficiencies relating to the administration of activities and operations of Foreign Service posts or bureaus or other operating units of the Department of State. The Secretary of State shall transmit any such report to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives and to other appropriate committees within 7 days after receiving it, together with a report by the Secretary of State containing any comments the Secretary of State deems appropriate.

(4) Nothing in this subsection shall be construed to authorize the public disclosure by any individual of any information which is—

(A) specifically prohibited from disclosure by any other provision of law; or

(B) specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs.

(e) (1) The Inspector General shall have the same authority in carrying out the provisions of this section as is granted under section 6 of the Inspector General Act of 1978 to each Inspector General of an establishment (as defined in section 11(2) of such Act) for carrying out the provisions of that Act, and the responsibilities of other officers of the Government to the Inspector General shall be the same as the respon-

sibilities of the head of an agency or establishment under section 6(b) and (c) of such Act.

(2) At the request of the Inspector General, employees of the Department and members of the Service may be assigned as employees of the Inspector General. The individuals so assigned and individuals appointed pursuant to paragraph (1) shall be responsible solely to the Inspector General, and the Inspector General shall prepare the performance evaluation reports for such individuals.

(f)(1) The Inspector General may receive and investigate complaints or information from a member of the Service or employee of the Department concerning the possible existence of an activity constituting a violation of laws or regulations, constituting mismanagement, gross waste of funds, or abuse of authority, or constituting a substantial and specific danger to public health or safety.

(2) The Inspector General shall not, after receipt of a complaint or information from a member of the Service or employee of the Department, disclose the identity of such individual without the consent of such individual, unless the Inspector General determines such disclosure is unavoidable during the course of the investigation.

(g) Under the general supervision of the Secretary of State, the Inspector General may review activities and operations performed under the direction, coordination, and supervision of chiefs of mission for the purpose of ascertaining their consonance with the foreign policy of the United States and their consistency with the responsibilities of the Secretary of State and the chief of mission.

Page 37, strike out subsection (c) (beginning on line 6 and ending on line 10).

Page 39, in the table below line 15, strike out "GS-7", "GS-6", "GS-5", and "GS-4" and insert in lieu thereof "GS-8", "GS-7", "GS-6", and "GS-5", respectively.

Page 49, line 18, after "the member" insert "and notwithstanding sections 5535 and 5536 of title 5, United States Code".

Page 51, line 24, immediately before "The" insert "(a)".

Page 52, after line 12, insert the following new subsection:

(b) A position in the United States may be designated as a Foreign Service position under subsection (a) only if the Secretary determines—

(1)(A) that the functions of the position cannot be performed without significant experience abroad in the conduct of foreign affairs, or

(B) that the position is required to be designated as a Foreign Service position—

(i) to provide opportunities for rotation of members of the Service from assignments abroad to assignments in the United States, or

(ii) to provide training for future assignments abroad, and

(2) that the advantages of continuity of incumbency or specialized skill in the position do not outweigh the advantages from its designation under this subsection.

Page 59, line 23, strike out "of the Foreign Service" and insert in lieu thereof "of the Department of State and the Foreign Service".

Page 64, beginning on line 9, strike out "in light of the recommendations of selection boards established under section 602 and the needs of the service" and insert in lieu thereof "in accordance with the recommendations of selection boards established under section 602".

Page 77, line 20, strike out "for not less than 10 years".

Page 79, strike out line 4 and all that follows down through line 10.

Page 79, line 11, strike out "(11)" and insert in lieu thereof "(10)".

Page 80, line 1, strike out "(12)" and insert in lieu thereof "(11)".

Page 80, line 7, strike out "(13)" and insert in lieu thereof "(12)".

Page 84, strike out line 17 and all that follows down through line 20 on page 86 and insert in lieu thereof the following:

(b)(1)(A) Any married participant who retires shall receive a reduced annuity and provide a maximum survivor annuity for his or her spouse unless the participant elects in writing at the time of retirement to waive or reduce the maximum survivor annuity for his or her spouse. Any election by any participant under the preceding sentence shall not be considered valid unless the participant establishes to the satisfaction of the Secretary of State (i) that the spouse has been notified of the loss of or reduction in survivor benefits or (ii) that the participant has complied with such notification requirements as the Secretary of State shall, by regulation, prescribe.

(B) If a participant or former participant has a former spouse for whose benefit a survivor annuity is required to be provided by the terms of any court order under section 820(b)(2), the participant shall receive a reduced annuity and provide a survivor annuity for that former spouse under section 814(a).

(2) The annuity of a participant or former participant, excluding any portion of the annuity not designated or committed as a base for any survivor annuity, shall be reduced by $2\frac{1}{2}$ percent of the first \$3,600 plus 10 percent of any amount over \$3,600.

(3)(A) If a former participant entitled to receive a reduced annuity under this subsection dies and is survived by a spouse, a survivor annuity shall be paid to the surviving spouse equal to 55 percent of the full amount of the participant's annuity computed under subsection (a), or 55 percent of any lesser amount elected as the base for the survivor benefit under paragraph (1)(A).

(B) Notwithstanding subparagraph (A), the amount of the annuity calculated under subparagraph (A) for a surviving spouse in any case in which there is also a surviving former spouse of the participant who qualifies

for an annuity under section 814(a) may not exceed 55 percent of the portion (if any) of the base for survivor benefits which remains available under section 814(a) (4) (B).

(4) An annuity payable from the Fund to a surviving spouse shall commence on the day after the annuitant dies and shall terminate on the last day of the month before (A) the death of the surviving spouse, or (B) if the surviving spouse remarries prior to attaining the age of 60 years, such remarriage. If a survivor annuity is terminated because of remarriage, it shall be restored at the same rate commencing on the date such remarriage is terminated if any lump sum paid upon termination of the annuity is returned to the Fund.

Page 89, line 8, strike out "804(12)" and insert in lieu thereof "804(11)".

Page 89, line 17, strike out "or surviving former spouse".

Page 90, line 1, strike out "(1)".

Page 90, beginning on line 3, strike out "and his or her spouse jointly elect" and insert in lieu thereof "elects".

Page 90, strike out line 13 and all that follows down through line 18.

Page 90, line 25, after "reduced" insert ", subject to any reduction required to provide a survivor benefit under section 814(a)".

Page 91, line 9, strike out "814(b) (5)" and insert in lieu thereof "814(a) (5)".

Page 98, lines 10 and 14, strike out "814(b)" and insert in lieu thereof "814(a)".

Page 100, beginning on line 3, strike out "or surviving former spouse who was married to the participant during the period of recall service".

Page 100, beginning on line 11, strike out "or such a surviving former spouse".

Page 100, line 15, after the period insert the following new sentence:

"Any surviving former spouse who was married to the participant during the period of recall service shall be entitled to have the same election rights with respect to an annuity under section 814(a) that a surviving spouse has under this subsection if and to the extent expressly provided in a court order under section 820(b) (2)."

Page 100, line 18, strike out "814(b)" and insert in lieu thereof "814(a)".

Page 101, line 21, strike out "60" and insert in lieu thereof "65".

Page 102, lines 1, 6, and 9, strike out "60" and insert in lieu thereof "65".

Page 102, strike out section 814, beginning on line 20 and ending on line 3 of page 110 and insert in lieu thereof the following:

SEC. 814. FORMER SPOUSES.—(a) (1) If a court order under section 820(b) (2) expressly so provides, in the case of any participant who is entitled to receive an annuity and who is survived by a former spouse, the former spouse shall be en-

titled to a survivor annuity in an amount which shall be determined by or in accordance with the provisions of that court order if the court order is consistent with the provisions of this chapter.

(2) A former spouse shall not be qualified for an annuity under this subsection if before the commencement of that annuity the former spouse remarries before becoming 60 years of age.

(3) An annuity payable from the Fund to a surviving former spouse under this subsection shall commence on the day the annuitant dies and shall terminate on the last day of the month before the former spouse's death or remarriage before attaining age 60. If such a survivor annuity is terminated because of remarriage it shall be restored at the same rate commencing on the date such remarriage is terminated if any lump sum paid upon termination of the annuity is returned to the Fund.

(4) (A) The maximum survivor annuity or annuities for any spouse or former spouse or combination of such survivor annuities, under this subsection (and section 806) with respect to any participant or former participant may not exceed 55 percent of the full amount of the participant's annuity, as calculated under section 806.

(B) Once a survivor annuity has been provided for under this subsection (or section 806) for any spouse or former spouse of a participant or former participant, a survivor annuity may thereafter be provided for a spouse or former spouse of that participant under this subsection (or section 806) only for that portion (if any) of the maximum available which is not committed for survivor benefits for any spouse or former spouse whose prospective right to such annuity has not terminated.

(C) After the death of a participant or former participant, a court order under section 820(b) (2) may not adjust the amount of the annuity of any former spouse under this subsection.

(5) (A) For each full month after a former spouse of a participant dies or remarries before attaining age 60, the annuity of the participant, if reduced to provide a survivor annuity for that former spouse, shall be recomputed and paid as if the annuity had not been so reduced unless an election is in effect under subparagraph (B).

(B) Subject to paragraph (4) (B), the participant may elect in writing within one year after the death or remarriage of the former spouse to continue the reduction in order to provide a higher survivor annuity under section 806(b) (3) for any spouse of the participant.

(b) (1) In the case of any participant or former participant providing a survivor annuity benefit under subsection (a) for a former spouse pursuant to a court order under section 820(b) (2), such participant may elect an additional survivor annuity under this subsection for any other former spouse

or spouse surviving the participant, if the participant satisfactorily passes a physical examination as prescribed by the Secretary of State.

(2) Neither the total amount of survivor annuity or annuities elected under this subsection with respect to any participant or former participant, nor the survivor annuity or annuities for any one surviving spouse or former spouse of such participant under this section and section 806(b)(3), shall exceed 55 percent of the full amount of the participant's annuity, as computed under section 806(a).

(3) (A) In accordance with regulations which the Secretary of State shall prescribe, the participant involved shall provide for any annuity under this subsection—

(i) by a reduction in the annuity or salary of the participant,

(ii) by a lump sum payment or installment payments to the Fund, or

(iii) by any combination of such reduction and payments.

(B) The present value of the total amount to accrue to the Fund under subparagraph (A) to provide any annuity under this subsection shall actuarially equivalent in value to such annuity, as calculated upon such tables of mortality as may from time to time be prescribed for this purpose by the Secretary of State.

(C) If a former spouse predeceases the participant or remarries before attaining age 60 (or, in the case of a spouse, the spouse does not qualify as a former spouse upon dissolution of the marriage)—

(i) if an annuity or salary reduction under subparagraph (A) is in effect for that spouse or former spouse, the annuity or salary shall be recomputed and paid as if it had not been reduced, and

(ii) any amount accruing to the Fund under subparagraph (A) shall be refunded, but only to the extent that such amount may have exceeded the actuarial cost of providing benefits under this subsection for the period such benefits were provided, as determined under regulations prescribed by the Secretary of State.

(4) An annuity payable under this subsection to a spouse or former spouse shall commence on the day after the participant dies and shall terminate on the last day of the month before the former spouse's death or remarriage before attaining age 60.

(5) Section 826 shall not apply to any annuity under this subsection, unless authorized under regulations prescribed by the Secretary of State, and any annuity under this subsection shall not be considered as a survivor annuity for purposes of the provisions of section 806(h) requiring an election of certain survivor benefits.

(c) Section 806(1) shall not apply to any annuity payable under subsection (a) or (b).

Page 110, beginning on line 8, strike out "(and to any former spouse" and all that follows down through line 9 and insert in lieu thereof a period.

Page 110, strike out line 18 and all that follows down through line 20 and insert in lieu thereof a period.

Page 113, strike out subsection (i) of section 815, beginning on line 16 and ending on line 7 of page 114.

Page 118, strike out subsection (i) of section 816, beginning on line 20 and ending on line 14 of page 119.

Page 121, strike out line 10 and all that follows down through line 15 of page 122 and insert in lieu thereof the following:

(b)(1) Payments under this chapter which would otherwise be made to a participant or annuitant based upon his or her service shall be paid (in whole or in part) by the Secretary to another person to the extent expressly provided for in the terms of any court decree of divorce, annulment, or legal separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of legal separation.

(2) Any former spouse of a participant or former participant shall be entitled to a survivor annuity under section 814(a) of this chapter if and to the extent expressly so provided for in the terms of a court decree of divorce or annulment, or the terms of any court order incident to such decree.

(3) This subsection shall not apply in the case of any court decree or order which is inconsistent with the requirements of this chapter, as determined by the Secretary of State.

Page 122, line 16, strike out "(3)" and insert in lieu thereof "(4)".

Page 122, line 22, strike out "(4)" and insert in lieu thereof "(5)".

Page 122, strike out line 24 and all that follows down through line 4 on page 123.

Page 147, line 8, strike out "of the Foreign Service" and insert in lieu thereof "of the Department of State and the Foreign Service".

Page 154, line 23, strike out "Columbia," and all that follows down through line 25 and insert in lieu thereof "Columbia."

Page 169, beginning on line 13, strike out "the operations of the Department," and all that follows down through line 17, and insert in lieu thereof "the Department in a labor-management dispute if such picketing interferes with the Department's operations, or".

Page 170, after line 5, insert the following:

Nothing in paragraph (7) of this subsection shall result in any informational picketing in the United States which does not interfere with the Department's operations being considered as an unfair labor practice.

Page 205, strike out line 10 and all that follows down through line 17.

Page 206, line 1, strike out "(D)" and insert in lieu thereof "(C)".

Page 240, after line 5, insert the following new section:

SEC. 2305. SEVERANCE PAY.—Section 5595(a)(2)(vi) of title 5, United States Code, is amended by inserting after "to

receive" the following: "benefits under section 609(b) (1) of the Foreign Service Act of 1980 or any".

Page 240, line 6, strike out "Sec. 2305." and insert in lieu thereof "Sec. 2306."

Page 240, line 21, strike out "Sec. 2306." and insert in lieu thereof "Sec. 2307."

Page 241, line 6, strike out "Sec. 2307." and insert in lieu thereof "Sec. 2308."

Page 241, line 10, strike out "Sec. 2308." and insert in lieu thereof "Sec. 2309."

Page 242, line 8, strike out "Sec. 2309." and insert in lieu thereof "Sec. 2310."

Page 242, line 18, strike out "Sec. 2310." and insert in lieu thereof "Sec. 2311."

Page 243, line 9, strike out "Sec. 2311." and insert in lieu thereof "Sec. 2312."

Page 244, line 6, strike out "Sec. 2312." and insert in lieu thereof "Sec. 2313."

Page 244, line 20, strike out "Sec. 2313." and insert in lieu thereof "Sec. 2314."

Page 250, strike out line 13 and all that follows down through line 22 and insert in lieu thereof the following:

(2) The provisions of such chapter regarding the rights of any former spouse to any annuity under 814(a) shall apply only with respect to an individual who, after such effective date, becomes the former spouse of a participant or a former participant in the Foreign Service Retirement and Disability System.

EXPLANATION OF AMENDMENTS

The amendment to page 2 is a conforming amendment necessitated by the amendment to section 209 of the bill, discussed below.

The amendments to page 5 to the table of contents are conforming amendments to reflect the addition of a new section 2305, discussed below, and to redesignate certain sections.

The amendment to page 15 is a conforming amendment necessitated by the amendment to section 209 of the bill, discussed below.

The amendment to page 18 revises section 202(a) of the bill. Section 202(a), as introduced, allows the Departments of Agriculture and Commerce unrestricted, department-wide use of the Foreign Service personnel authorities provided by the bill. This was not intended, and could result in preferential treatment being accorded employees of those departments which is not provided to overseas employees of the Department of Defense and other domestic agencies. The amendment restricts the use of the Foreign Service personnel authorities by these departments. Under the amendment the Department of Agriculture may use the authorities only with respect to the Foreign Agricultural Service, and the Department of Commerce only with respect to those employees of the Department performing functions transferred to the Department from the Department of State by Reorganization Plan No. 3 of 1979.

The amendment to page 21 revises section 209 in its entirety. Section 209 relates to the Office of Inspector General, and the purpose of the amendment is to make the provisions of the bill conform to provisions of the Inspector General Act of 1978. The provisions of the amendment are explained in detail elsewhere in this report.

The amendment to page 37 strikes out section 311(c) of the bill. Section 311(c) authorizes the Secretary of State to prescribe regulations governing the overseas employment of family members of all Government employees. The authority to prescribe these regulations currently is vested in the Office of Personnel Management (OPM). The effect of the amendment is to leave this authority with OPM.

The amendment to page 39 adjusts the linkage between the lower classes of the Foreign Service Schedule and the General Schedule. The effect of the amendment is to increase the salary rates for individuals assigned to classes FS-7 through FS-10.

The amendment to page 49 is a technical amendment necessary to ensure that an acting principal officer may receive additional pay to reflect additional responsibilities, notwithstanding the general prohibition against such additional pay contained in title 5, United States Code.

The amendment to page 51 is a conforming amendment necessitated by the amendment to page 52, discussed below.

The amendment to page 52 adds a new section 501(b), relating to designating positions as Foreign Service positions. The effect of the amendment is to provide specific statutory criteria which must be met before a position in the United States may be designated as a Foreign Service position.

The amendment to page 59 is a conforming amendment necessitated by the amendment to section 209 of the bill, discussed above.

The amendment to page 64 relates to the procedures and criteria for granting and renewing limited extensions of career appointments. The amendment provides that the granting or renewal of such extensions must be in accordance with the recommendations of selected boards, and deletes language which provides that the "needs of the Service" may be a criterion for these determinations.

The amendment to page 77 removes the requirement that former spouse of a Foreign Service member must have been married to that member for not less than 10 years during periods of service by that member before the former spouse acquires any right with respect to a survivor annuity based on the member's service. The effect of the amendment is to expand the class of former spouses who may be accorded rights to survivor benefits under the bill (although subsequent amendments somewhat reduce the extent of the rights accorded in the introduced bill).

The amendments to pages 79 and 80 are conforming amendments necessitated by other amendments relating to the rights of former spouses of members of the Foreign Service.

The amendment to page 84 conforms the provisions of the bill relating to elections to provide less than a full survivor benefit for a spouse, with the provisions of H.R. 5410, relating to such elections under the Civil Service retirement system. H.R. 5410 passed the House of Representatives on April 1, 1980, by a record vote of 372-4. The effect of the amendment is to require a Foreign Service member

who elects at the time of retirement not to provide a survivor benefit for the member's spouse to notify (or take all reasonable steps to notify) the spouse of that election.

The amendments to pages 89, 90, 91, 98, and 100 are conforming amendments necessitated by other amendments relating to the rights of former spouses of members of the Foreign Service.

The amendments to page 101 and page 102, lines 1, 6, and 9, raise the mandatory retirement age for members of the Foreign Service from 60 to 65.

The amendment to page 102, beginning in line 20, together with the amendment to page 121, strikes out those provisions in the bill which provide that certain former spouses of Foreign Service members are automatically entitled to (1) a pro-rata share of a member's retirement annuity; and (2) a survivor annuity upon the death of the member (in the case of multiple spouses, each gets a pro-rata share of the survivor benefit). Instead of providing automatic entitlement for former spouses the amendments (1) continue existing law (approved by the committee and by the 95th Congress), which permits a court, in connection with any court approved property settlement or decree of divorce or legal separation, to order that a portion of a member's annuity be paid to a former spouse; and (2) extend the court's authority to permit a court order to require the member to provide a survivor annuity for a former spouse. Thus, the rights of a former spouse to either a portion of the basic annuity or to a survivor annuity will be determined by the appropriate state court. The amendment does not change the provisions of the bill which permit a retiring member to purchase from the Government a supplemental survivor annuity to provide security for a current spouse in those cases where a former spouse has been awarded a survivor annuity by a court.

The amendments to pages 110, 113, and 118 are conforming amendments necessitated by other amendments relating to the rights of former spouses of members of the Foreign Service.

The amendment to page 121 is explained above in connection with the discussion of the amendment to page 102, beginning in line 20.

The amendments to page 122 are conforming amendments necessitated by other amendments relating to the rights of former spouses of members of the Foreign Service.

The amendment to page 147 is a conforming amendment necessitated by the amendment to section 209 of the bill, discussed above.

The amendment to page 154 eliminates an inconsistency with respect to the standards of review to be followed by a Circuit Court of Appeals in cases brought pursuant to the labor-management relations provisions in the bill. The standard of review is conformed to that provided for similar cases under the Civil Service Reform Act of 1978.

The amendments to pages 169 and 170 revise the provisions in the bill relating to picketing as an unfair labor practice so that the provisions are consistent with corresponding provisions in the Civil Service Reform Act of 1978.

The amendments to pages 205 and 206 are conforming amendments necessitated by the amendment to page 39, discussed above.

The amendment to page 240 adds a new section 2305 and is a technical amendment to ensure that the amendments made by the bill will not inadvertently result in certain members of the Foreign Service

becoming entitled to severance pay under section 5595 of title 5, United States Code, as well as section 609(b)(1) of the bill. Section 609(b)(1) authorizes severance pay for members who are separated under the time-in-class provisions or are selected out. The amendment provides that members who may receive benefits under section 609(b)(1) are not entitled to also receive severance pay under section 5595 of title 5. Under current practice members are not entitled to both benefits.

The amendments to pages 240, 241, 242, 243, and 244, redesignate certain sections of the bill.

The amendment to page 250 amends the effective date provision to provide that the provisions of Chapter 8 regarding the rights of former spouses to court ordered survivor benefits shall apply only with respect to individuals who, after the effective date, become former spouses of Foreign Service members.

PURPOSE

The principal purpose of H.R. 6790 is to strengthen and improve the Foreign Service of the United States by reorganizing and consolidating the components of the Foreign Service which exist in six executive departments and agencies (the Department of State, the United States International Communication Agency, the International Development Cooperation Agency, the Peace Corps, the Arms Control and Disarmament Agency, and the Department of Commerce) under one law governing Foreign Service operations and personnel administration.

COMMITTEE ACTION

On June 26, 1979, the Secretary of State sent to the Speaker of the House of Representatives Executive Communication 1884 which contained a draft bill to promote the foreign policy of the United States by strengthening and improving the Foreign Service of the United States, and for other purposes. This communication was jointly referred to the Committees on Foreign Affairs and Post Office and Civil Service.

On June 28, 1979, the Honorable Dante B. Fascell introduced the draft bill by request (H.R. 4674). The Subcommittee on Civil Service and the Subcommittee on International Operations of the Committee on Foreign Affairs held joint hearings on H.R. 4674 on June 21, 28, July 9, 11, 17, 18, 24, September 6, 7, 11, 19, 20, 27, and October 16, 1979. Testimony was received from a Member of Congress, representatives of the Department of State, the International Communication Agency, the Agency for International Development, the Peace Corps, the Office of Personnel Management, the American Foreign Service Association, the American Federation of Government Employees, and public witnesses.

The subcommittees held simultaneous mark-up sessions on H.R. 4674 on February 7, 12, 13, and March 5, 1980. On March 5, 1980, the subcommittees approved a clean bill which was introduced as H.R. 6790 on March 12, 1980, by Mr. Fascell, Chairman of the Subcommittee on International Operations and the Honorable Patricia Schroeder, Chairwoman of the Subcommittee on Civil Service. On April 24, 1980,

the Committee on Post Office and Civil Service ordered H.R. 6790, as amended, favorably reported by voice vote.

STATEMENT

The Foreign Service Act of 1980 is intended to serve ten major purposes:

1. *Codification.*—The bill consolidates and reorganizes the provisions of various statutes governing the operation of the Foreign Service of the United States. This bill replaces the Foreign Service Act of 1946 and incorporates provisions from numerous subsequent enactments. The reason for recodifying existing law is to provide a single charter for personnel management in the Foreign Service. Managers and employees are better served by a discrete and accessible body of law governing their day-to-day employment relationship.

2. *Flow.*—A serious personnel management problem in the foreign affairs agencies over the past decade has been the slowing down of promotion and selection out processes. Loosely based on the military model, the Foreign Service is supposed to be an "up or out" system. Nearly all officers enter at the bottom and are either promoted to the next higher class within a fixed period of time or selected out when their allotted time in class expires. The poorest performers in each class are selected out for relative performance, after the requirements of due process are observed. Finally, officers have been subject to mandatory retirement at age 60, assuring that the promotion channel stays clear.

That is how the system was supposed to work, but it has failed in the past decade. The selection-out mechanism atrophied for a period while the Federal courts ruled on its constitutionality (*see, Lindsay v. Kissinger*, 367 F. Supp. 949 (D.D.C. 1973)). Mandatory retirement was halted while it was under challenge in court (*see, Vance v. Bradley*, 440 U.S. 93 (1979)). Maximum times in class were extended to prevent the separation of talented Foreign Service officers for whom there were no promotion opportunities. As a result of these occurrences, the upper grades of the Foreign Service became glutted. Promotion opportunities dwindled.

One of the central purposes of this legislation is to restore the "flow" to the system. Among the mechanism designed to restore "flow" are:

- retaining a mandatory retirement age provision but raising the age to 65. The committee believes that an age 60 mandatory retirement is unfair. The data is not convincing that 60 is the appropriate dividing line between those who can and those who cannot meet the challenges of the Foreign Service. While any mandatory retirement age is by its nature arbitrary, setting the age at 65 works less of a hardship than setting the age at 60.
- placing senior members of the Service on limited-term renewable career extensions. In establishing a new Senior Foreign Service, the committee provides that, upon expiration of maximum time in class, members of the Service will be placed on limited-term, renewable extensions. These extensions may be renewed periodically based on the performance of the member in accordance with selection board recommendations. These limited extensions also apply to non-Senior Foreign Service

personnel such as members of the current staff corps who have reached the highest class available to them and whose time in class has expired.

—reaffirming and expanding the coverage of selection out for expiration of time-in-class and relative performance. The bill would extend selection out procedures to all American career personnel, not just the officers now covered. The bill provides review procedures for selection out for relative performance to meet the requirement imposed in *Lindsay v. Kissinger*, that due process protections are required in selection out cases. Certain employee protection provisions were placed on the use of selection out for expiration of time-in-class to assure that a reduction in the applicable time limit for a class would not cause the immediate separation of members of the Service who believed that they had time remaining in which to be promoted.

The committee expects that class rankings, promotion, awards of performance pay, denials of step increases, renewals of career extension contracts, and other significant personnel actions will be based on the objective judgment of broadly representative selection boards, so that political pressure and personnel pique do not affect the process. Another important safeguard for employee rights is that the precepts governing all selection boards are fully negotiable with collective bargaining representatives.

3. *Simplification.*—Foreign affairs agencies have, in the past, created numerous overlapping personnel categories. The committee believes that the Foreign Service personnel authorities should be utilized only for American personnel who are needed for worldwide assignment, including frequent rotation, and who have committed themselves to being truly worldwide available. All other personnel should be employed under the authorities provided in title 5, United States Code, for Government employees generally. This bill requires the simplification and rationalization of personnel categories and mandates the conversion of those employees who are not in the appropriate category. Any conversion required is intended to take place without detriment to the employee affected.

4. *Compatibility.*—The bill takes a small step towards increasing the compatibility of the use of the Foreign Service authorities by the various agencies which are authorized to utilize those authorities, such as the Department of State, the International Communication Agency (ICA), the International Development Cooperation Agency (IDCA), and the Departments of Commerce and Agriculture. The Secretary of State serves in a dual role, as both the head of the lead foreign affairs agency of Government and as the official accountable for all members of the Foreign Service, regardless of the agency to which they are assigned. In exercising his or her personnel management role, the Secretary of State has the right and the obligation to ensure integrity of personnel management in other foreign affairs agencies. The committee looks to the Secretary of State as the official accountable for the success or failure of the Foreign Service personnel system.

In reaffirming the central role of the Secretary of State in personnel management, the committee does not intend to reduce the autonomy of the other foreign affairs agencies. The heads of the other foreign affairs agencies are expected to continue to administer the programs

and the personnel (including members of the Foreign Service) of their agencies. No programmatic authority is transferred by this legislation. Only that personnel authority which is explicitly transferred from an agency head to the Secretary of State is changed by this legislation.

Much of the discussion of the Subcommittee on Civil Service focused on the question of increasing uniformity in personnel administration by establishing a single Senior Foreign Service, administered by the Secretary of State. This proposal was ultimately rejected, largely because it was seen as undermining the authority of the other agency heads.

The bill does set as one of its purposes "increasing efficiency and economy by promoting maximum compatibility among the agencies authorized by law to utilize the Foreign Service personnel system . . ." The move towards more uniformity must be seen as a move towards greater efficiency and not as a shift in the balance of power among agencies. The committee intends affected agencies to work together to increase compatibility and uniformity and return to Congress with proposed legislation if needed.

5. *Interchange.*—While the distinctions between personnel categories are clarified, greater opportunities for temporary assignments in other personnel systems are provided. Under language restating and expanding the Pearson amendment interchange provisions, Foreign Service members can be assigned to non-Foreign Service positions, including Senior Executive Service positions, in other agencies, domestic or international organizations, states, localities, colleges, or other special institutions. In all cases, the agency or organization to which the member of the Service is assigned must agree to accept the assignment. Similarly, provision is made for the detailing of members of the Senior Executive Service to Senior Foreign Service positions. Broad authority to make limited appointments is continued from existing law.

The committee's purpose is to assure frequent interchange, both to broaden the experience and knowledge of Government employees and to broaden the base from which agency decisions are made by including some employees who have not served exclusively within the agency. The committee does not intend these interchanges or limited appointments to diminish the promotion or assignment opportunities of career members of the Foreign Service.

6. *Pay comparability.*—The legislation establishes a clear and precise linkage between the Foreign Service Schedule and the General Schedule. This linkage is intended to bring the pay of the Foreign Service into line with comparable pay levels under the General Schedule. Although the Pay Comparability Act of 1970 applies to the Foreign Service, levels of compensation for the Foreign Service lag behind those of other Government employees.

By establishing exact linkages, the committee intends for the pay of members of the Foreign Service to stay even with the pay of General Schedule employees. Procedures are created to assure fair conversion of all employees. Four extra steps are added to each class to provide incentive to remain in the Foreign Service for those whose particular specialties do not permit the promotional opportunities found in service in the United States. Moreover, the additional steps enable easier transition for staff corps personnel.

The committee determined that in converting Foreign Service personnel to the General Schedule it would be unfair to make the conversion to the General Schedule without first converting the personnel to the new Foreign Service Schedule which reflects true comparability. This will ensure that their eventual conversion to the General Schedule will be to grade and step levels which are really commensurate with their current positions.

7. *Senior Foreign Service.*—Taking a lead from the Civil Service Reform Act of 1978 (CSRA), the committee resolved to create a new cadre of top senior officers in the Foreign Service. This Senior Foreign Service, like the Senior Executive Service, has rigid entry requirements, fewer employee protections, and higher monetary awards for excellence of performance. Although, as with the Senior Executive Service, there is some potential for political manipulation and abuse in the Senior Foreign Service, the committee believes there are adequate protections to prevent abuse. First, employees who feel themselves subject to improper political pressure can take their complaints to the Foreign Service Grievance Board, the Inspector General, the Special Counsel of the Merit Systems Protection Board, and Congress. Second, the committee intends to watch closely the implementation of the Senior Foreign Service to assure that it is not misused. Third, a section is included in the bill to protect employees and to implement merit system principles prohibiting improper political pressure. The committee expects that the benefits and management flexibilities connected with the Senior Foreign Service will result in improved performance, increased effectiveness, and higher productivity for the Foreign Service.

There are a number of significant differences between the Senior Foreign Service and Senior Executive Service. First, time-in-class restrictions continue to apply and limited career extensions are provided for continued service. This means that senior officers who have exhausted their time-in-class in the Senior Foreign Service will be placed on limited-term renewable contracts and will be continued on the payroll only if a selection board determines that their services are satisfactory and if the Service needs their continued services. There are no similar mechanisms in the Senior Executive Service. Second, the percentage of non-career members of the Senior Foreign Service is limited to five percent, compared to ten percent in the Senior Executive Service. The five percent figure reflects the current proportion of noncareer personnel. Third, performance awards are based on recommendations by selection boards which in turn are based on negotiated precepts. Performance awards in the Senior Executive Service are based on criteria established by the Office of Personnel Management.

The committee strongly cautions against any politicization of the senior ranks and expects that determinations concerning promotions, which must be made in accordance with negotiated selection board precepts, will reflect legitimate management concerns such as: the number of promotions which are justifiable in light of present and future needs as established by the number of officers who can be expected to retire or to otherwise leave the Service; the number of officers being promoted into the SFS; the projection of future rates of promotion in the lower ranks; and the areas of needed expertise.

The promotion process is not intended to permit the agencies to eliminate persons for political reasons, for having engaged in responsible dissent, or because they hold personal views at variance with top-management officials or political appointees. Individuals who have committed themselves to a difficult career, and in whom the Government has invested an enormous amount of training and education should be able to reasonably expect that a high level of performance will be rewarded by continued service. Otherwise, they will be unable to anticipate with any degree of certainty a career progression. They will feel at the mercy of factors beyond their control, and they will fear the consequences of any constructive dissent or independence of mind, no matter how valuable or justified. The effects on the morale and the quality of the Service would be devastating.

Without a reasonable degree of predictability and security in their careers, qualified individuals will not in the future make the commitment which a Foreign Service career requires. Long periods of service overseas prevent Foreign Service members and their families from developing the type of professional and personal contacts which facilitate a second career. Recent experience in the area of foreign relations has amply demonstrated the importance of having strong, courageous, and intelligent men and women in the Foreign Service. Nothing in this legislation should be taken as a signal that these attributes will not be valued in the future.

The key to the success of the Senior Foreign Service is ultimately the wisdom, integrity, and managerial fortitude with which it is established and operated. These attributes cannot be legislated. However, as a demonstration of the committee's serious commitment to the members of the Foreign Service, there is included in section 2402 of the bill a requirement for regular reporting to the Congress on implementation of the Act, including such matters as the projected and actual rates of promotion, and the numbers of employees being terminated, retained, and advanced. Because input from the members of the Service themselves is essential, included in the section is a requirement that the exclusive representatives of Foreign Service employees be given access to all information relevant to this oversight process, and that their comments be incorporated in reports made to the Congress.

8. *Labor-Management Relations.*—The bill will establish the first statutory framework for the conduct of labor-management relations in the Foreign Service. Up until now labor relations have been governed by Executive Order No. 11636. This legislation places the committee on record as endorsing collective bargaining in the Foreign Service, and as recognizing that labor organizations and collective bargaining further effective and efficient government. The labor-management provisions of this bill are based on title VII of the Civil Service Reform Act of 1978, with provision made for the unique nature of the Foreign Service.

Under the bill, as under title VII, all conditions of employment are fully negotiable, with the exception of those conditions of employment which are specifically excluded from negotiation. Falling in the excluded category are items specifically provided for by statute such as pay and benefits. Strikes and slowdowns are specifically prohibited.

The labor-management provisions of the bill differ from those of

the CSRA in a number of ways. First, a special labor board is created within the Federal Labor Relations Authority to handle cases from the Foreign Service. Second, certain managers and supervisors are permitted in the bargaining unit. Third, a single, agency-wide, world-wide bargaining unit is established by statute. Fourth, the grievance mechanism, including a grievance board, is established by statute. Other than these few differences, the provisions of the bill and title VII are generally the same.

The history of labor-management relations in the Foreign Service is different from that of the domestic agencies of Government. In the Foreign Service, professional associations of Foreign Service officers gradually evolved into collective bargaining representatives. This legislation places new and increased responsibilities on labor organizations representing Foreign Service personnel, including the responsibility to filter grievances by members of the bargaining unit. The committee recognizes that the new labor-management provisions also place significant new and increased responsibilities on management, including attempting to resolve disputes quickly without resorting to third-party mechanisms.

9. *Former spouses.*—Spouses of Foreign Service members have to decide whether to follow their husbands or wives to far away posts for assignments or whether to stay in the United States and follow their own careers. The traditional view held that the spouse, typically the wife, should follow her husband, abandoning her own working life. Many wives have done this. Many have happily lived out their lives as partners. Some other Foreign Service marriages, however, have ended in divorce. In these cases, the wife is often left penniless. She has no Social Security benefits because she never worked in the private sector. She has no pension benefits because she never worked long enough at a single job for pension rights to vest. And, she has no right to her former husband's retirement benefit. The bill addresses this problem by allowing state courts to divide the retirement and survivor benefits of a member of the Service to provide an annuity for a former spouse as part of an alimony or property settlement incident to a divorce.

By its very nature, a property settlement made pursuant to a divorce judgment must be made on a case by case basis, giving due consideration to the parties' histories and economic circumstances. The committee believes that the subcommittee provision, which established a presumption of the divorced spouse's right to part of the Foreign Service officer's pension and survivor benefit, constituted an unwarranted infringement on the right and duty of the State courts to decide divorce cases according to the equities of each case.

10. *Family member employment.*—A long-standing Foreign Service problem has been the lack of employment opportunities for family members abroad. Spouses and children of members of the Foreign Service have found it very difficult to find employment at posts abroad. This bill strengthens current law to indicate congressional intent that employment opportunities for family members at posts be increased and establishes an office of family liaison to ensure this is done. Many positions which are open to foreign national employees should be made available to family members if there is no need for long-term tenure

in the position. The committee does not intend, however, that the employment of family members should result in fewer positions offering career advancement opportunities for members of the staff corp or other career members of the Service.

MAJOR PROVISIONS BY CHAPTER

TITLE I—THE FOREIGN SERVICE OF THE UNITED STATES

CHAPTER 1

The findings and objectives of the bill reflect the committee's goal of a professional career Foreign Service, based on merit principles, free from discrimination and both competent and utilized to provide foreign policy advice to the President and the Secretary of State. The purposes include moving towards maximum compatibility of the Foreign Service personnel systems in the various agencies authorized to use the system.

Another expressed purpose is to minimize distinctions between the officer corps and the staff corps. The bill refers to members of the Service generally. Both groups of employees perform vital functions for the foreign policy of the United States, and both should serve under substantially the same conditions of employment.

The subcommittee added a major new section to Chapter 1. Section 105 contains five parts. First, it requires that all personnel actions, including promotions, appointments, evaluations, and awards of performance pay, be taken in conformance with the merit system principles, established by the CSRA and defined in section 2301 of title 5, United States Code. Among other things, these principles guarantee equal employment opportunity, merit selection, equal pay, performance-based promotions, and freedom from improper reprisal, personal favoritism, or arbitrary action.

Second, section 105 emphasizes the protection accorded to employees against illegal discrimination and against reprisals for blowing the whistle on wrongdoing and the right to report honestly from the field even if straying from official policy, and the protection against being subject to prohibited personnel practices, as defined in section 2302 of title 5, United States Code.

Third, new section 105 restates the fundamental right of all Federal employees, as well as of all citizens, to petition the Congress freely and without fear of reprisal.

Fourth, the provisions of the minority recruitment program, specified in section 7201 of title 5, United States Code, are extended to the Foreign Service. Commonly known as the Garcia amendment, the minority recruitment program requires the identification of and attempt to remedy underrepresentation. An annual report to Congress, personally signed by the agency head, is required. This personal signature requirement is intended to elevate the level of attention given in an agency to remedying underrepresentation where it exists. The Garcia amendment has been properly interpreted by the Office of Personnel Management to include women within the definition of minorities.

Finally, new section 105 contains a savings provision which continues existing rights under the various equal employment opportunity

laws and which permits the continued use of affirmative action to achieve equal employment opportunity.

Additionally, the Inspector General is instructed to look for compliance with the principles set out in section 105.

The committee recognizes that the Foreign Service personnel system lacks many of the rigidities of the Civil Service system. Providing these employee protections is meant to ensure that the flexibilities in the Foreign Service system are not used in an inappropriate manner or for inappropriate ends. Employee rights are protected and cannot be overridden for the expeditious accomplishment of management objectives.

CHAPTER 2

Chapter 2 deals with the management of the Service generally and establishes certain statutory positions to perform specific functions. Of considerable importance, this chapter defines the role of the Secretary of State in overseeing the Foreign Service and specifies the relationship between the Secretary of State and the heads of other agencies authorized to use the Foreign Service authorities in using those authorities. Section 201 vests primary responsibility for administering and directing the Foreign Service in the Secretary of State. It is to the Secretary of State that this committee will look for assurance that the Foreign Service personnel system is running properly.

Section 202 grants specific authority to use the Foreign Service personnel system to four other agencies and leaves open the possibility of other agencies using the authorities if they are specifically authorized to do so. The Peace Corps and the Arms Control and Disarmament Agency are two other agencies which have been granted such authority by other legislation. Even if an agency has authority to use the Foreign Service personnel authorities, these personnel authorities can only be used for employees and positions that meet the requirements of worldwide availability and rotational assignment described in sections 501, 502, and 504. The general rule stemming from section 3101 of title 5, United States Code, is that Government employees are hired under the authorities contained in title 5. Certain specified types of employees are permitted to be employed under other authorities. As exceptions, these specified categories are to be construed narrowly. The Foreign Service is one of the exceptions to the general rule. Only employees and positions which are truly Foreign Service in character can be designated as Foreign Service. Hence, the general authority of the Secretary of Agriculture to use the Foreign Service only permits the use of that authority for employees of the Foreign Agricultural Service and within that service only for positions which meet the specific requirements in Chapter 5.

Section 203 deals with the relative powers of the Secretary of State and the heads of agencies over their Foreign Service personnel. The bill points in the direction of maximum compatibility, and requires consultation between the Secretary of State and the heads of other agencies authorized to utilize the Foreign Service authorities to promote this compatibility. The current balance of power between the Secretary of State and the heads of other foreign affairs agencies is not intended to be altered by this legislation. The committee, however, does want the agencies to work together to increase the compatibility

of their personnel systems. Section 204 works in concert with section 203 and requires all agency heads to consider ways to increase uniformity in personnel administration and exhorts the Secretary of State to encourage the development of uniform policies. Section 205 adds the further direction that the Foreign Service personnel system should be compatible with the other personnel systems in Government, most notably the competitive service.

Another important provision of Chapter 2 is contained in section 207 which restates the authority of the chief of mission over all personnel at the post. Of the 17,500 United States citizen civilian agency employees abroad, only 5,300 work for the Department of State. Hundreds of civilian employees work for other agencies such as the Agency for International Development, the International Communication Agency, the Peace Corps, and the Departments of Agriculture, Commerce, Justice, Transportation, Treasury, Energy, and Health and Human Resources. Additionally, numerous intelligence employees work abroad. The ambassador is given responsibility and accountability for all these employees. The only employees excepted from his direction and supervision are employees under the command of a United States area military commander.

A committee amendment rewriting section 209 significantly strengthens the powers of the Inspector General of the Foreign Service and the Department of State. Section 209, as amended, establishes a statutory Office of Inspector General for the Department of State and the Foreign Service patterned after similar offices created in other Federal departments and agencies under the Inspector General Act of 1978 (Public Law 95-452). Although initially opposed by the departments and agencies affected, the 1978 Act was approved overwhelmingly by the Congress and has been strongly endorsed by President Carter.

Section 209 would centralize primary responsibility for audit and investigative activities of the State Department in the Office of Inspector General. The Office, which would have no program responsibilities, would conduct and supervise audits and investigations relating to State Department programs and operations. It would also provide leadership and coordination and recommend policies for activities designed to promote economy and efficiency and to prevent and detect fraud and abuse in such programs and operations.

In addition, the Office would provide a means for keeping the Secretary of State and the Congress fully and currently informed about problems and deficiencies relating to State Department programs and operations and the necessity for and progress of corrective action.

The primary purpose of the changes made by the committee amendment was to conform the office established under section 209 more closely to the statutory offices of Inspector General previously created under the 1978 Act.

During consideration of the bill it was pointed out that section 209, as introduced, did not provide the State Department with an office having either the authority or the guaranteed independence of those established by the 1979 Act for the following reasons:

—Although the new office was to have responsibility for overseeing all activities of the State Department, the name implied that its jurisdiction was limited to the Foreign Service.

- Section 209, as introduced, did not prohibit assignment of program responsibilities to the Inspector General; consequently, there was no assurance that the Inspector General might not be placed in the position of auditing or investigating activities for which he or she had management responsibility. Moreover, assignment of program responsibilities would make it impossible for the Inspector General to devote full time and attention to evaluating foreign policy implementation, promoting economy and efficiency, and preventing and detecting fraud and program abuse.
- Although the proposed Inspector General would have a number of duties and responsibilities which were identical to those of Inspectors General under the 1978 Act, he or she would not be granted much of the statutory authority provided in the 1978 Act. For example, the proposed Inspector General would not have had statutory authority to hire his or her own staff, subpoena authority or other statutory provisions for access to needed information, guaranteed access to the Secretary of State when necessary in the performance of the Inspector General's duties, or statutory provisions for obtaining assistance from other Government agencies.
- Finally, section 209, as introduced, did not include the following important provisions of the 1978 Act—
 - (a) a specific provision forbidding State Department officials from preventing or prohibiting an Inspector General from initiating, carrying out, or completing any audit or investigation,
 - (b) a provision requiring that the Inspector General be appointed "without regard to political affiliation", and
 - (c) language providing for the appointment of professionally qualified Assistant Inspectors General for Audit and for Investigations to supervise performance of those activities.

The revised language of section 209 corrects these deficiencies and provides that the Inspector General shall have the same specific statutory authority previously granted to other statutory Inspectors General under section 6 of the 1978 Act.

Section 211 establishes by statute and refocuses the current Board of Examiners for the Foreign Service. Currently, the Board oversees the examination process for the Foreign Service. This section gives a statutory mandate to the Board and requires that it include public members and members from outside the Foreign Service community. The committee expects that any selection device used for the Foreign Service will validly predict job performance and will not discriminate against minorities and women. The data on the current test suggest that a serious problem may exist. The Uniform Guidelines for Employee Selection Procedures (29 CFR Part 1607) applies the same strict rules for employee selection procedures to both the public and private sectors. The bill sets up the Board of Examiners as the unit responsible for compliance with these guidelines. Section 211 contemplates that private citizens knowledgeable in the relationship between testing and equal employment opportunity will be appointed to the Board of Examiners.

CHAPTER 3

Chapter 3 deals with appointments to the Foreign Service generally. While it generally restates existing law, new provisions delete the present requirement for new Presidential appointment and Senate confirmation every time a Foreign Service officer is promoted from one class to another. Senate confirmation is still required for initial appointment, as well as for appointment to the Senior Foreign Service and as chief of mission.

New language was added by the subcommittee on requirements for the appointment of ambassadors. The committee is concerned that some Presidential ambassadorial appointments, particularly appointments of individuals who have not served as Foreign Service officers, have produced inferior representatives of the United States abroad. As a general rule, ambassadors should be appointed from the ranks of career members of the Foreign Service, although highly qualified individuals from other backgrounds should also receive consideration.

Provisions for appointment to the Senior Foreign Service are included in Chapter 3. No more than five percent of the members of the Senior Foreign Service may be individuals, who are not career members.

Section 307 provides opportunities for lateral entry into the Foreign Service. The State Department and other foreign affairs agencies have been very slow in achieving true equal employment opportunity, particularly at the higher grades. This provision should help.

Chapter 3 also includes provisions for the employment of family members at posts abroad. The committee is convinced that, unless meaningful opportunities for employment are provided at posts abroad, it will become increasingly difficult to attract and retain high-quality Foreign Service personnel. The strain of frequent reassignment and hostile environments has a serious effect on family life. Without job possibilities at post, family members are not likely to continue following their spouses to assignment abroad.

CHAPTER 4

One of the primary purposes of the bill is to make the pay of members of the Foreign Service comparable. To accomplish this purpose, the bill links the pay of the Foreign Service Schedule to grades of the General Schedule. In the future, pay rates of the two will change in tandem, preventing a recurrence of the recent trend of Foreign Service salaries falling behind those paid for comparable General Schedule positions.

The decision of the committee was based largely on a study prepared for the Department of State on the appropriate pay levels for members of the Foreign Service. In computing the appropriate levels, the contractor examined a wide range of factors including the difficulty of overseas assignment.

Levels of pay comparable to those provided in the General Schedule are needed to attract and retain qualified Foreign Service personnel. The increasing pressures and dangers of overseas diplomatic service require a reappraisal of the compensation patterns for the Foreign Service. The provisions in the bill reflect the judgment of

the committee as to what the appropriate levels of compensation should be.

Chapter 4 also contains the performance pay provisions for the Senior Foreign Service. Performance pay creates a linkage between pay and performance and allows for the rewarding of individuals who are particularly efficient or effective. The performance pay elements closely parallel those for the Senior Executive Service under the CSRA. Indeed, the foreign affairs agencies are required to take the criteria used in the Senior Executive Service into account when determining awards of performance pay.

Coordinating the provisions for pay of foreign nationals at posts abroad with the provisions for the hiring of family members is a purpose of the bill. Section 408(a) authorizes the Secretary of State to issue regulations providing for pay schedules for foreign nationals. However, where the local compensation plan would provide for less pay than the United States minimum wage, the minimum wage will be paid instead. Each salary determination for family members will be made by the head of the agency based on considerations of fairness to the family member and to other employees. While the committee believes that family members should be paid decent wages for their work at posts abroad, the primary concern of the committee is in maximizing employment opportunities for those family members while at the same time preserving career opportunities for members of the staff corps. Balancing the interest of family members, members of the Service, and foreign national employees with the heads of the Service is the responsibility of the Secretary.

Chapter 4 also contains provisions for premium pay for extraordinarily long hours of work. The committee decided to permit members of the Foreign Service to receive premium pay in the same manner and to the same extent as other Government employees under subchapter V of chapter 55 of title 5, United States Code. This provision does not affect the applicability of the Fair Labor Standards Act with respect to members of the Service in the United States. Further, an agency head is permitted to pay special differentials for work above and beyond normal requirements. These special differentials can only be paid when premium pay is not authorized. By including the Foreign Service within the premium pay provisions of title 5, the committee intended coverage under the provisions allowing for overtime pay as well as standby pay provided for under section 5545 of title 5. The committee expects the foreign affairs agencies to manage their work forces in ways which will minimize the use of premium pay and thereby reduce Government expenditures. Nevertheless, where there is a need for exceptionally long hours of work, there is no reason that a member of the Foreign Service should be denied appropriate compensation for his or her time.

CHAPTER 5

Chapter 5 covers position classification and designation as well as assignments. The committee reaffirms the basic policy that the personnel provisions of title 5, United States Code, govern all Federal Government employment, unless there is a clear reason for other provisions to apply and unless there is explicit statutory authority to use other personnel authorities. This legislation provides explicit author-

ity for use of the Foreign Service personnel authorities by the Department of State, the International Development Cooperation Agency, the International Communication Agency, the Department of Commerce (for those employees performing functions transferred under the Reorganization Plan No. 3 of 1979) and the Department of Agriculture (for the Foreign Agricultural Service). The bill further codifies existing provisions of law allowing for the use of Foreign Service personnel authorities for certain employees involved in foreign assistance, the Arms Control and Disarmament Agency, and the Peace Corps.

These explicit authorizations to use the Foreign Service personnel authorities are limited by the language of section 501(b) which specifies the criteria under which a position can be designated as a Foreign Service position. Unless the position meets the criteria provided in 501(b), the position may not be designated a Foreign Service position. The committee sees the use of Foreign Service personnel authorities as an exception to the general rule, and, as such, the designation criteria should be construed narrowly. The use of the Foreign Service personnel system merely for administrative convenience or to provide better retirement benefits is not acceptable.

The criteria for position designation provided in section 501(b) are not intended to alter in any way provisions of the regulations issued by the Agency for International Development on May 1, 1979, pursuant to section 401 of the International Development and Food Assistance Act of 1978 (Public Law 95-424), commonly known as the Obey amendment. These regulations continue to have the force and effect of law.

Section 501(b) must be read in conjunction with section 504 which establishes the requirement that members of the Foreign Service are obligated to spend substantial portions of their careers abroad and must be available for worldwide assignment. Together, these sections ensure that Foreign Service positions are those that require individuals who are subject to the special conditions of employment which members of the Foreign Service have accepted. The continued use of Foreign Service designations for positions which do not require rotation and for individuals who are not available for worldwide assignment is unacceptable.

CHAPTER 6

Chapter 6 provides the essential provisions governing promotion and tenure in the Foreign Service. It is with respect to promotions and tenure that Foreign Service personnel authorities differ most sharply from those for the rest of the Federal Civil Service. Despite differences, however, the central purposes of the two systems are the same; i.e., to reward and promote those employees who perform well and to help marginal performers to do better. Both systems have their own methods to assess performance; yet, neither method has been immune to criticism. Both systems are designed to ensure that performance appraisals take into account demonstrated merit and are not based on extraneous factors like personality conflicts or political pressures. Both systems provide due process rights to challenge improper agency actions.

Selection boards are the basic bodies which make determinations on promotion and retention. They make their decisions on the basis of a broad range of material, all of which must be maintained to permit an appellate body to review the work of the selection board when challenged. Selection boards are assigned the challenging task of rank ordering the members of each competitive grouping within each Foreign Service class. The top individuals on this ranking are promoted while the bottom individuals can be subject to separation. The up-or-out system is driven by the time-in-class mechanism which requires promotions to avoid separation. This mechanism is expanded in two ways by the bill.

First, time-in-class limitations are imposed for the first time on individuals who are in the highest class in the Service, i.e., the top rank of the Senior Foreign Service. After time-in-class has expired, careers can be extended on individual qualifications as determined by selection boards operating under precepts negotiated by agency management and representatives of the employees.

Second, the time-in-class mechanism is extended to cover all United States personnel in the Foreign Service who are paid at officer levels. Many staff corps members have been immune from selection out for expiration of time-in-class (and also for relative performance). The committee believes that the entire Foreign Service should be treated similarly and that it is appropriate to extend time-in-class limitations to additional members of the Service.

The rankings of selection boards serve different purposes. For promotions and career extensions, the rankings of a selection board are binding on the Secretary. The agency head recommends promotions to the President in the rank order which the selection board specifies. Names of individuals can only be removed for exceptional reasons.

Awards of performance pay to members of the Senior Foreign Service are similarly based on the rankings of selection boards. Denials of step increases must also be in accordance with selection board rankings. The initial determinations of who should be selected out for sub-standard performance are also based on the rankings.

On the other hand, decisions about granting multiple step increases, and other personnel actions may be made by an agency head using selection board rankings in merely an advisory manner.

While the committee intends that agency heads have a substantial degree of flexibility in managing their work force, the committee is also concerned that promotion and retention systems be fair and based on merit. The selection board process is intended to ensure fairness. Procedures under which the selection boards will operate are subject to negotiation between agency management and the exclusive representative. External factors, such as budget and mission, will determine how many members of the Service in various categories should be promoted and retained. The committee intends that even these decisions take into account the views of representatives of the employees.

Section 601(c)(2) expresses the committee's commitment to a well-managed Foreign Service personnel system which provides predictability, regularity, and stability. In the past, periods of rapid promotion have been followed by periods of little advancement. Over the past twenty years the Foreign Service has been operating on a boom or

bust cycle. This pattern of fluctuation has a devastating effect on employee morale and serves to decrease the efficiency of the Service. An up-or-out system cannot long survive without a steady, consistent stream of promotions. Making this goal a reality is not something that can be achieved solely through legislation. Rather strong and effective management, working closely with employee representatives, must act aggressively to maintain this type of system. Current management of the Department of State has assured the committee that it intends to do precisely that.

CHAPTER 7

Chapter 7, dealing with training, is largely a recodification of existing law. Two new provisions are of particular note.

First, the bill provides authority for the agency head to provide orientation, language, and functional training to family members of Government employees who will serve abroad. Grants of reasonable amounts of money for these training programs can be made under section 704. The committee intends that the training grants provided under section 704 for family members will only be available for training authorized for family members under section 703(d). Further, by eliminating the dollar limitations on training grants, the committee does not intend to encourage imprudent expenditures by Government agencies. The committee expects regulations will limit the cost and periods of training which will be paid for by the Government. The current dollar limit appeared too inflexible during an inflationary period to be maintained by statute.

Second, chapter 7 establishes by statute and extends to other foreign affairs agencies the recently created family liaison office at the Department of State. The purpose of this office is to provide career counseling for spouses, serve as a clearinghouse for information about employment opportunities abroad, and serve as an advocate within the Department for the interests of family members. Such an office is needed in the Foreign Service because of the exceptional problems faced by spouses and other family members of Foreign Service personnel. Subject to rotation and short-term assignments mainly in foreign countries, each member of the Foreign Service necessarily places his or her family in a difficult position. A spouse has limited opportunities to find employment and no opportunity to develop an independent career, if he or she follows the member of the Service on assignments. Increasingly, spouses are living apart so that each can maintain his or her own career. This situation places strains on marriages. The Government has an obligation to minimize the disruptive effect of a Foreign Service career on families. Agencies, through the family liaison office, are expected to find ways to minimize disruption and to keep families together.

CHAPTER 8

Chapter 8 recodifies the Foreign Service retirement law without significant change. There are two major elements of this chapter which are new.

First, the mandatory retirement age was raised by the committee from the current 60 to 65. The committee believes that arbitrary

mandatory retirement ages can be unfair and a form of improper discrimination. Clearly, the lower the mandatory retirement age the greater the hardship it is likely to work. On the other hand, the administration produced evidence that increasing age results in likelihood of unavailability for worldwide assignment. The administration argued that age 60 was a reasonable cutoff for a Foreign Service career. Underlying the administration's concern for maintaining the mandatory retirement age is its concern for maintaining promotion opportunities in the Foreign Service. The longer employees are allowed to remain in the Foreign Service, the fewer opportunities there will be for advancement from the lower levels. The committee is not persuaded, however, that the interests of younger members in career advancement justify overruling the interests of older members in continuing to work. As a compromise between strong and conflicting interests on this issue, the committee agreed to an amendment raising the mandatory retirement age from 60 to 65. It is a compromise which reduces the unfairness of a mandatory retirement age while allowing for the maintenance of predictable career patterns.

Second, chapter 8 contains new provisions concerning the rights of former spouses. H.R. 6790, as approved by the Subcommittee on Civil Service, provided for a prorata allocation of retirement and survivor benefits between a member of the Foreign Service and current spouses and former spouses of the member. It also provided a waivable right to a survivor benefit to current and former spouses of a member.

The full committee adopted an amendment providing that retirement and survivor's benefits may be subject to division between the member and current and former spouses when the equities so dictate. The committee rejected, however, the proposition that former and current spouses should be entitled, by law, to a pro rata share of a member's annuity and a survivor benefit which requires a reduction in the member's annuity. The committee instead adopted existing law with respect to annuities and expanded existing law to allow courts to order that survivor benefits be provided for former spouses. The committee also ensured that an election to waive survivor's benefits could only be made with notice provided to the spouse.

The committee believes that considering pension benefits as marital property subject to division as part of any alimony award or property settlement incident to a divorce is justified in the case of the Foreign Service. Spouses are in a very difficult position. If they accompany their spouses, they are subject to rotation as often as every two years, with most of the assignments being in foreign countries. A spouse has little opportunity to work and virtually no opportunity to earn retirement benefits of his or her own. He or she is unlikely to vest in a retirement program. Further, sufficient work in the United States to gain Social Security credit is unlikely. Hence, divorced spouses of members of the Foreign Service may be left destitute with no income in their old age. The bill, as amended, appropriately addresses this problem.

CHAPTER 9

Chapter 9 is mainly a recodification of existing laws governing travel, leave, health care, and representation allowances. Two changes to existing law should be noted.

First, a provision is included to permit the Government to pay for the international portion of one round trip each year for children to visit parents with whom they do not normally reside. The provision is intended to allow children of divorced or separated parents to visit the parent with whom they do not live at least once a year. The cost of international travel is so high that, without this provision, many Foreign Service members could lose all contact with their children. Children's visits are important both to the morale of the parent and to the health of the child. The committee, therefore, believes that this provision is in the interest of the Government.

Second, section 905 permits an agency head to provide payment of representational expenses to family members, as well as to members of the Service. Insofar as wives of members of the Service are routinely asked to perform social functions on behalf of the United States Government, the committee believes that the Government should pay for the actual costs of these activities. As unfair as it is to ask a wife of a Foreign Service member to perform functions without pay, it is much more unfair to ask her to incur expenses without the possibility of reimbursement.

CHAPTER 10

Chapter 10 establishes, by statute, the groundrules for labor-management relations in the Foreign Service. It is based on title VII of the Civil Service Reform Act of 1978 (codified as chapter 71 of title 5, United States Code). Chapter 10 departs from title VII, however, in a few areas to account for special circumstances which exist in the Foreign Service. Except where there is an explicit departure from the title VII provisions, this chapter is intended to be the same as title VII. The committee does not intend for the language of Chapter 10 to serve as a guide for interpreting title VII. Chapter 10 does not modify or amend and is not intended to interpret the provisions of chapter 71 of title 5, United States Code.

A major difference between the two laws is that chapter 10 creates a separate Foreign Service Labor Relations Board, within the Federal Labor Relations Authority, to decide cases arising under that chapter. This Board is constituted in a manner intended to assure its members possess knowledge in the conduct of foreign affairs which should assist the Board in its work. The Board is bound to interpret the provisions of the law as written and will, in most cases, be deciding issues in the same way that the FLRA decides parallel issues. Indeed, FLRA decisions are to be used as precedents where applicable for the Board, but Board decisions are not precedent for the FLRA. This relationship represents a balance between the desire for uniform labor-management relations programs in the Federal Government and the desire to respond to the special needs of the Foreign Service.

Another significant difference relates to who may be a member of a bargaining unit and the scope of the appropriate bargaining unit. Chapter 10 permits supervisors and some managers to be members of the bargaining unit. Further, the appropriate unit is determined by the statute to be agencywide and world-wide. This broad bargaining unit is necessary due to the rotational requirements of the Foreign Service. In the Foreign Service, employees often serve in positions for two years before reassignment. In some positions, they have super-

visory responsibilities; in others, they do not. Hence, to exclude supervisors or to establish more than one unit per agency would make it difficult for the union to function. The establishment of broad, agency-wide units is intended to result in strong and stable exclusive representatives.

As with the Foreign Service Labor Relations Board, a separate impasses panel is created within the FLRA to marry knowledge of labor relations with knowledge of the conduct of foreign affairs. The Foreign Service Impasses Panel is assigned the same role for the Foreign Service that the Federal Service Impasses Panel has for the domestic Civil Service. As under title VII, an agency head may not overrule a decision of the Panel.

The statement of management rights in Chapter 10 is intended to cover essentially the same matters as the corresponding statement of management rights in title VII. The wording of section 7105(a) was modified to reflect the rank-in-person nature of the Foreign Service. As with title VII, the management rights are an exception to the general obligation to bargain over conditions of employment. As an exception, these management rights should be construed narrowly. The committee believes that the widest range of negotiation, within the confines of section 1005, is in the interest of stable and productive labor-management relations in the Foreign Service.

Unlike the domestic Civil Service, the Foreign Service has a statutory grievance system. Therefore, the creation of a grievance system is not dependent on the bargaining process. However, those procedures not specifically addressed by statute, concerning the procedures by which the Foreign Service Grievance Board operates may be negotiated.

The committee clarified, by amendment, the type of picketing which can be considered an unfair labor practice. The language now parallels that of title VII. The intent is to consider only picketing which relates to a labor-management dispute as an unfair labor practice. Other picketing could be prohibited by departmental regulations, but labor-management laws should not be used to enforce those regulations. Further, informational picketing in the United States which does not actually interfere with agency operations is not an unfair labor practice.

CHAPTER 11

Chapter 11 is largely a recodification of existing law relating to grievances in the Foreign Service. Unlike the domestic Civil Service, the Foreign Service has had a statutory grievance system since 1976. The need for the Grievance Board continues and the committee intends that it should be the basic provider of due process protection to members of the Foreign Service.

Although chapter 11 is largely a recodification, the committee intends this legislation to reaffirm the independence and increase the authority of the Board. While the agency head is provided with a veto of Grievance Board decisions under section 1107(d); the grounds on which the agency head can overrule a decision have been narrowed by eliminating "efficiency of the Service". The committee intends that this disapproval authority be used only in the most exceptional cases

and that the heads of the various foreign affairs agencies implement Grievance Board decisions in most cases. Moreover, the agency head's action is subject to judicial review under section 1110.

In section 1101(a)(1)(F), the committee continues existing law safeguarding members of the Service from reprisal for filing complaints with the Grievance Board. The committee heard numerous charges that no member of the Service is really free from reprisal for filing a grievance; that there is always a cost to the member's career. The committee is concerned about these allegations. There should be no reprisals for filing grievances. The Grievance Board should act aggressively to ensure that no reprisals take place. Further, the committee intends for any action in the nature of a reprisal to be fully grievable, even if the action is specifically excepted from the definition of grievance under 1101(b).

Three notable changes in the section were made during subcommittee consideration. First, section 1108, relating to access to records, was amended to make it clear that management's refusal to provide information to the Board because of its sensitive nature should be considered by the Board. A questionable withholding by an agency head may be construed by the Grievance Board as an admission of the alleged improper conduct.

Second, the bill requires that only the exclusive representative may invoke Grievance Board jurisdiction, except in separation cases. This requirement of union representation parallels the general rule in the domestic Civil Service and the private sector. It serves as a filter to assure that frivolous cases are not generally brought before the Board. Since the operations of the Grievance Board are paid for by the taxpayer, it is appropriate to establish such a filter to limit its workload. Of course, these same considerations dictate that agencies should attempt to resolve grievances without forcing cases to the Board. Nonmembers of the bargaining unit are entitled to their own representatives as are bargaining unit members facing separation.

Third, provision was made for the Grievance Board to order agencies to pay reasonable attorneys fees to the same extent and for the same type of cases which the Merit Systems Protection Board is allowed to order the payment of fees. This will include separation and other adverse action cases.

TITLE II—TRANSITION, AMENDMENT TO OTHER LAWS, REPEALS AND MISCELLANEOUS PROVISIONS

CHAPTER 1

Converting employees from their present positions to new pay schedules and different personnel systems (including the Senior Service) cannot be accomplished without some difficulties. The policy governing this chapter is to minimize the disruption to individual employees and to preserve the rights and benefits of employees subject to conversion. The committee recognizes that minimizing disruption and saving rights and benefits entail costs to the Government. These costs are justified in view of the fact that by forcing conversions the Government, as the employer, is altering the legitimate expectations

of its employees. Fairness requires that the Government cushion these employees against the hardships which will come in the wake of forced conversion.

The bill provides that all current Foreign Service employees will be converted to new personnel categories. Since the committee found that members of the Foreign Service were underpaid in comparison to their General Schedule counterparts, members converted to the General Schedule at their current pay would, in effect, be down-graded. To cure this problem, these employees first will be converted to the new Foreign Service Schedule, then they will be converted to General Schedule grades commensurate with their duties, responsibilities, and training.

The Civil Service Reform Act of 1978 provided senior employees in personnel system. When supergrades were asked to convert to the Senior Executive Service. This bill provided little choice for senior Foreign Service officers. Either Foreign Service officers at the O-1 and O-2 levels opt to apply for the Senior Foreign Service or they must leave the Service within three years. This forced conversion is justified both by the up-or-out nature of the Foreign Service and by the fact that, unlike the new Senior Executive Service, members of the Foreign Service are not being asked to convert to an entirely different personnel system. When supergrades were asked to convert to the Senior Executive Service, they were being asked to give up all protections of a rank in position, tenured system. Those FSO-1s and FSO-2s being asked to convert are being asked to switch from a rank-in-person system with some tenure insecurity to another rank-in-person system with slightly greater insecurity. Since the change is less drastic, the employee protections conferred are fewer.

Chapter 1 provides three years for employees subject to conversion from the Foreign Service to the General Schedule to decide whether they want Foreign Service careers. Those who decide to remain in the Foreign Service will have to commit themselves to worldwide availability. Further, the agency must be able to assign the individual abroad periodically. Agencies should aggressively seek out positions for these individuals who want to remain in the Foreign Service.

The situation at the International Communication Agency is of particular interest. The exclusive representative of the employees objected initially to converting domestic only employees to the Foreign Service as the agency wanted to do in the mid seventies. Management and the union entered into negotiations which resulted in certain protections for employees who were forced to convert to the Foreign Affairs Specialist category. In order not to disrupt this agreement, the bill provides that the mandatory conversion of Foreign Affairs Specialist employees at the International Communication Agency will not start until July 1, 1981.

Employees converted are provided with permanent saved grade and tenure rights comparable to what they had. Further, employees are given the option to remain in their current retirement program or to convert to the retirement program provided by their new designation. Also, employees not currently subject to selection out for relative performance will not be made subject to it for a period of ten years or until the employee meets the age and service requirements for an immediate annuity.

CHAPTER 2

Chapter 2 makes amendments to other laws, generally conforming them to the provisions of this Act. Added was a new section allowing the Secretary of State to pay subsistence expenses of security officers and other employees who have to spend extraordinary amounts of time in a travel status.

The committee amended section 7(a) of the Peace Corps Act to permit the President to use the Foreign Service personnel authorities for worldwide assignment. Even without this new prefatory language in the Peace Corps Act, section 501(b) would limit use of the Foreign Service authorities by the Peace Corps. This language would require the Peace Corps to convert to the General Schedule positions which do not meet the requirements of section 501(b). For the employees converted, this will mean the protections of the competitive service and will permit achievement of career status after three years. This new provision in no way changes the five-year employment limitation of the Peace Corps Act and in no way reduces the autonomy of the Peace Corps. What it does do is require the Peace Corps to manage its personnel system in the same way that all other agencies of the Government are required to manage their personnel systems.

CHAPTER 3

This chapter amends provisions of title 5, United States Code, to conform with the provisions of the bill. There are also a number of new provisions.

New subchapter VI of chapter 35 is added to facilitate broadened interchange between the Foreign Service and the competitive service. This subchapter follows existing law in providing reemployment rights following a limited appointment in the Foreign Service.

Sections 5522 and 5523 of title 5 were amended to permit pay advances when Foreign Service personnel have to leave post. Existing law only permits such advances at times of imminent danger to lives. The new language gives the Secretary of State the authority to order departures from post in the national interest. The problem with the existing language is that declaring an imminent danger in order to permit an evacuation might in itself cause the dangerous situation which the Secretary of State is attempting to avoid by ordering an evacuation. This less restrictive language should serve both the interests of the employees and the interests of foreign policy.

The back-pay provisions are amended to allow the payment of back pay and attorneys fees in Foreign Service grievance cases and in labor disputes to the same extent as authorized with respect to the rest of the Civil Service.

Section 5924 of title 5 providing for the payment of certain cost-of-living allowances is amended to permit payment of separate maintenance allowances when the employee elects not to have his family accompany him to post. Such an allowance is offset by savings resulting from reduced transportation and post allowances.

Section 5925 of title 5 is amended to allow for the payment of special incentives to Foreign Service personnel to encourage them to accept assignment at particularly unattractive posts abroad. This 15

percent supplement can be paid in addition to the post differential. New section 5928 of title 5 permits the payment of a 25 percent supplement for service in particularly dangerous posts.

CHAPTER 4

This chapter contains a broad and traditional savings provision. The committee intends that the Act be implemented in a way which minimizes disruption to employees and eases the transition. The committee further intends that ratings of selection boards completed before the effective date of this Act may be used for the purposes of the Act so long as the selection board procedures meet all the procedural guidelines established in the Act.

Section 2402 requires a report by the Secretary of State on the implementation of the Act. This reporting requirement is intended to maintain congressional pressure on Foreign Service management to move toward a regular and predictable flow of recruitment and to assure that the transition is conducted in an intelligent and responsible manner.

SECTION-BY-SECTION ANALYSIS

Section 1—Short title

Section 1 provides that this Act may be cited as the "Foreign Service Act of 1980".

Section 2—Table of contents

This section provides a table of contents setting forth the chapters and sections contained in the two titles of the bill. Title I sets forth the basic structure and the statutory terms and conditions for Foreign Service employment. Title II provides the necessary transition authorities, conforming amendments, and repeals of other laws.

TITLE I—THE FOREIGN SERVICE OF THE UNITED STATES

CHAPTER 1—GENERAL PROVISIONS

Section 101—Findings and objectives

Section 101(a) sets forth congressional findings concerning the conduct of foreign policy of the United States, the Foreign Service of the United States, and the relationship between the two. The section highlights the need for a career foreign service, characterized by excellence and professionalism, which will provide assistance to the President, the Secretary of State, and the agencies concerned with foreign affairs in the conduct and formulation of U.S. foreign policy.

Furthermore, it is noted that the Foreign Service of the United States, as established by the foreign service acts of 1924 and 1946, must be preserved as a separate entity, strengthened, and improved to carry out its mission effectively. This legislation builds on the groundwork provided by those earlier laws.

The section goes on to articulate the continuing need for members of the Foreign Service to be representative of the American people, aware of United States history and principles, informed of current concerns and trends in American life, knowledgeable of the affairs,

cultures, and languages of other countries, and available to serve in assignments throughout the world.

Section 101(a) also states that the Foreign Service should be operated on the basis of merit principles. The finding that the Foreign Service should be operated on the basis of merit principles is new to the Foreign Service Act, although the legal requirement is not. This finding reflects the sense of other laws promoting equal employment opportunity and prohibiting discrimination. Specifically, merit principles, as defined in section 102(8) of the bill, are set out in the Civil Service Reform Act (see, 5 U.S.C. 2301) and are made explicitly applicable to the Foreign Service by the bill. The merit principles apply, for example, to recruitment, appointment, assignment, promotion, and training in the Foreign Service.

This section contemplates the development and maintenance of an active and effective equal employment opportunity program for the Foreign Service in which special emphasis is given to employment and advancement opportunities for women and members of minority groups. The bill does not create a new or separate body of substantive law in this area, but directs the vigorous implementation of legislation currently applicable to the Foreign Service, such as Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e), section 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 633a), section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), and provisions of the CSRA (5 U.S.C. 2301, 2302).

The committee believes that these findings are fundamental to the character and operation of the Foreign Service. In order to be truly representative of the American people, the members of the Foreign Service must be recruited, trained, and promoted without discrimination on the grounds of race, religion, sex, national origin, marital status, age, or handicapping condition. In order to ensure a Foreign Service with the high caliber members, knowledgeable in U.S. history and current events as well as in foreign languages and cultures, the programs for recruitment and examination of entering candidates must be strengthened and improved.

Finally, availability for worldwide assignment must be clearly understood as a fundamental requirement for an individual to enter the Foreign Service and thereafter to be promoted and retained within the Service. One of the basic problems giving rise to this legislation is the decline of "worldwide availability". Approximately 51 percent of the individuals between ages 50 and 60 who are serving today in the Foreign Service are not available for worldwide assignment. This results in a concentration of such individuals in Europe and Washington and the inability of the foreign affairs agencies to ensure adequate staffing of the more undesirable posts overseas. While the committee does not expect, and would not condone, absolute adherence to the requirement of "worldwide availability", the committee does expect that the requirement will be carefully defined and applied so as to preserve both the individual rights of members of the Foreign Service and the needs of the foreign affairs agencies for effective staffing patterns overseas. The requirement is not to be used as a means to engineer the retirement of members of the Service who have disagreed with adopted policies.

Section 101(b) states the objective of the bill which is to strengthen and improve the Foreign Service of the United States. This is to be accomplished, in accordance with merit principles, by admission into the Service through impartial and rigorous examination, acquisition of career status only by those who have demonstrated their fitness through successful completion of probationary assignments, effective career development, advancement and retention of the ablest, and separation of those who do not meet the requisite standards of performance. This bill reaffirms the "up or out" character of the Foreign Service.

Another means to attain the stated objective is, as expressed in subsection (b) (2), to foster the development and vigorous implementation of policies and procedures, including affirmative action programs, which will ensure equality of opportunity in entry into and advancement within the Foreign Service. This complements the finding in section 101(a) (4) that the Foreign Service should be representative of the American people.

Section 101(b) (3) states that the Foreign Service will be strengthened by simplifying the structure of the Foreign Service personnel categories and salaries to eliminate inefficiencies and inequities which have resulted from the overlapping of personnel categories and pay schedules. Toward this end, the bill eliminates the anomalous "domestic" Foreign Service category which has in the past weakened severely the requirement of availability for worldwide service. A single Foreign Service Schedule results from the elimination of the separate pay schedules.

Section 101(b) (4) states that the bill will strengthen and improve the Foreign Service by establishing a statutory basis for labor-management relations in the Foreign Service. These relations have been governed by Executive Order No. 11636 of December 17, 1971. They will now be governed by Chapter 10 of this bill, which is derived substantially from chapter 71 of title 5, United States Code (title VII of the CSRA). This section also reaffirms the system for the resolution of individual grievances originally established under sections 691-694 of the Foreign Service Act of 1946, as amended, which is codified in chapter 11 of the bill, with certain improvements.

Section 101(b) (5) states that the Foreign Service will be strengthened by minimizing the impact of the hardships and burdens of overseas service upon members of the Foreign Service, and mitigating the special impact of those conditions upon their families. The committee recognizes that the requirements of the Foreign Service affect both the members of the Service and their families.

Section 101(b) (6), drawn from section 111(7) of the 1946 Act, states that providing compensation which will attract and retain qualified personnel, together with a system of incentive payments and awards to encourage and reward outstanding performance will help strengthen the Foreign Service. Compensation for members of the Foreign Service should take into account the conditions of overseas service referred to in section 101(b) (5).

Section 101(b) (7) relates to establishing a Senior Foreign Service to provide a highly qualified corps of senior officers who together possess outstanding executive leadership qualities, strong policy form-

ulation capabilities, and highly developed functional and area expertise. While no single officer may necessarily possess all these qualities, this section describes the kinds of talents the committee expects to be reflected in the Senior Foreign Service.

Section 101(b)(8) follows section 11(8) of the 1946 Act and relates to improving managerial flexibility and effectiveness. The committee's intent is to strike the necessary balance between managerial flexibility and protection of the rights of individuals in the Foreign Service.

Section 101(b)(9) relates to increasing efficiency and economy by promoting maximum compatibility among the agencies authorized by law to utilize the Foreign Service personnel system, as well as compatibility between that system and other Federal personnel systems. The committee discussed and rejected a legislative requirement for a completely uniform Foreign Service or the development of a single Senior Foreign Service crossing agency lines.

While at one time the Foreign Service was entirely contained within the Department of State as the primary foreign affairs agency, the situation has changed over the years. Today, Foreign Service personnel are found not only in the Department of State, but also in the International Communication Agency, the Agency for International Development, the Arms Control and Disarmament Agency, the Peace Corps, and the Department of Commerce. While the different areas of foreign policy expertise demand different kinds of specialized training, certain fundamental skills required of Foreign Service personnel remain the same regardless of agency. The Secretary of State, who is directly responsible to the President for the conduct of foreign policy, must see to it that the activities of all the foreign affairs agencies are coordinated so that no separate unit in any foreign affairs agency takes action to contravene the established policies of the United States. The concept of compatibility squares with the current practice of consultation among the heads of foreign affairs agencies and the committee expects that this consultation will continue and improve leading to that maximum compatibility which is an objective of the bill. The authority of each agency head over the personnel and operations of his agency remains intact. The committee expects the heads of the various foreign affairs agencies to work together to increase uniformity of personnel management.

Section 101(b)(10) relates to enabling the Foreign Service to serve effectively the interests of the United States and to provide the highest caliber of representation in the conduct of foreign affairs.

Section 102—Definitions

Section 102 defines the key terms used in the bill. Many of the definitions are substantially the same as those contained in section 121 of the 1946 Act, but in some cases have been clarified or updated. The definitions in this section are not intended to apply to chapters 2 and 3 of title II of this bill containing technical and conforming amendments to other laws, since those laws contain their own definitions of terms.

Section 102(a)(1) follows section 121(7) of the 1946 Act in defining "abroad" to mean all areas not within the United States, which is defined in section 102(a)(12).

"Agency" is defined by section 102(a)(2) to conform with the definition in 5 U.S.C. 552(e), which excludes the Congress, the Federal courts, the governments of U.S. territories and possessions, and the government of the District of Columbia. However, it does include Government corporations, independent agencies, and all executive branch establishments, including the Executive Office of the President. The scope of the term is essentially the same as under section 121(4) of the 1946 Act.

Section 102(a)(3) defines "chief of mission" as any principal officer in charge of a diplomatic mission or of an office designated by the Secretary of State as diplomatic in nature, including an officer who is temporarily in charge of a mission. This definition is substantially the same as under section 121(9) of the 1946 Act.

Section 102(a)(4) follows section 121(3) of the 1946 Act in using "Department" to mean the Department of State, but, with respect to the exercise of functions under the bill, references to the Department also include other agencies authorized to use the Foreign Service personnel system.

Section 102(a)(5) defines "employee" to mean both civilian and uniformed personnel of the United States Government. A different definition of "employee" which is limited to members and former members of the Service is set out in section 1002(8) for application only in Chapter 10 of the bill.

Section 102(a)(6) defines "function" to include any duty, obligation, power, authority, responsibility, right, privilege, discretion, or activity. This subsection, which has no parallel in the 1946 Act, is added to avoid the need for repetitious use of terms throughout the bill.

Section 102(a)(7) defines "Government" as the Government of the United States of America. This subsection is a verbatim restatement of section 121(5) of the 1946 Act.

Section 102(a)(8) defines "merit principles" as those principles set forth in 5 U.S.C. 2301, enacted as part of the CSRA. Among the principles set forth in 5 U.S.C. 2301 are the following: (1) recruitment should be from qualified individuals, and selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition which assures that all receive equal opportunity; (2) discrimination on the basis of race, sex, age, religion, national origin, marital status, or handicapping condition should be prohibited; (3) equal pay should be provided for equal work, with appropriate incentives and recognition provided for excellent performance; (4) retention and separation should be based on performance; (5) employees should be provided effective education and training where this would result in better organizational and individual performance; and (6) employees should be protected against arbitrary action and personal favoritism. These merit principles are referred to in subsequent sections of the bill governing personnel administration.

Section 102(a)(9) defines "principal officer" as the officer in charge of a diplomatic mission, or a consular or other post of the Foreign Service other than a consular agency. While its scope is essentially the same as that of section 121(8) of the 1946 Act, this term now also

includes officers in charge of special purpose posts, such as the Sinai Support Mission, which were not contemplated by the 1946 Act.

Section 102(a)(10) follows section 121(3) of the 1946 Act in defining "Secretary" to mean the Secretary of State and adds that (subject to section 201(b) relating to exclusive functions of the Secretary of State) "Secretary" also includes the heads of other agencies authorized to use the Foreign Service personnel system. Similarly, in this report, the term "Secretary" unless otherwise indicated, includes the heads of other agencies utilizing the personnel authorities in the bill.

Section 102(a)(11) defines "Service" as the Foreign Service of the United States. This restates section 121(2) of the 1946 Act.

Section 102(a)(12) defines "United States", when used in a geographic sense, as the fifty States and the District of Columbia. This definition follows the definition of "continental United States" in the 1946 Act with the obsolete term "continental" omitted.

Section 102(b) specifically provides that references in this legislation or in any other law to "Foreign Service officers" shall, with respect to the International Communication Agency, be deemed to refer to Foreign Service information officers. This category of personnel was created by Public Law 90-494, 82 Stat. 810 (1968), which is repealed by the bill.

Section 103—Members of the Service

Section 103 lists the categories of the members of the Service. It is patterned after section 401 of the 1946 Act.

There are seven categories of personnel included under the generic term "members of the Service": (1) chiefs of mission; (2) ambassadors at large; (3) members of the Senior Foreign Service; (4) Foreign Service officers; (5) Foreign Service personnel; (6) foreign national employees; and (7) consular agents. Ambassadors at large were not expressly included among the categories of personnel under the 1946 Act, but as the title is in frequent use, its inclusion here is desirable. The Senior Foreign Service is newly established by this bill and has no parallel in the 1946 Act. The separate categories of Foreign Service Reserve and Foreign Service staff personnel under the 1946 Act are abolished as is the category of Foreign Service Reserve Unlimited established by Public Law 90-494, 82 Stat. 810 (1968). The functions enumerated in this section for the various groups of personnel are descriptive rather than limiting.

Section 104—Functions of the Service

Section 104 describes in general terms the functions of the members of the Foreign Service. Paragraph (1) states that members of the Service, under the direction of the Secretary, shall represent the interests of the United States in dealings with foreign countries and international organizations and shall perform such other functions as are relevant to their appointments and assignments. Examples of these functions include observing, reporting on, and interpreting events abroad; assisting Americans abroad and foreigners wishing to visit the United States; and providing management and administration for the conduct of foreign affairs. While derived substantially from section 301 of the 1946 Act, the paragraph adds a reference to functions performed under the Vienna Convention on Diplomatic

Relations and the Vienna Convention on Consular Relations, two widely-accepted multilateral agreements of particular significance because they codify much of customary international law with respect to diplomatic and consular relations.

Section 104(2) states that members of the Foreign Service shall provide guidance for the formulation and conduct of United States foreign policy and Government programs and activities which relate to the foreign relations of the United States.

Carrying forward the substance of section 311 of the 1946 Act, section 104(3) directs that members of the Service shall perform functions on behalf of any agency or other Government establishment requiring their service. This provision permits members of the Foreign Service to use the authorities of other agencies at the request of such agencies where necessary or appropriate. For example, a general services officer at a post abroad is authorized by this language to use Department of Agriculture contracting authority and funds in executing and administering contracts at the request of the Department of Agriculture.

Section 105—Merit principles; protections for members of the Service; and minority recruitment

Section 105 sets forth provisions relating to the application of merit principles, the protection from reprisals against members of the Service, and the establishment of a recruitment program for women and minorities. The section is new in that it has no parallel in the 1946 Act and does provide, for members of the Foreign Service, express protection against reprisals for reporting information, analyses, or recommendations which do not follow official policy.

Section 105(a)(1) requires that all personnel actions affecting career members and career candidates, including applicants for career candidate appointments, be taken in accordance with merit principles. Section 105(a)(2) defines "personnel action" to mean appointments, promotions, assignments, performance pay or special differential awards, step increases, separations, performance evaluations, and any decision, recommendation, examination, or ranking relating to any of these matters.

Section 105(b) requires the Secretary to prescribe regulations to ensure that applicants and members of the Service are protected from prohibited discrimination and reprisals for disclosures of information. Members and applicants are protected from discrimination on the basis of race, color, religion, sex, national origin, age, handicapping condition, marital status, or political affiliation. This prohibition parallels the prohibited personnel practices contained in the CSRA (*see*, 5 U.S.C. 2302(b)(1)). Individuals are free from the reprisals for public disclosures of information, made in the reasonable belief that the information evidences a violation of law, rule, or regulation, or mismanagement, a gross waste of funds, abuse of authority, or a danger to public health or safety if the disclosure is not specifically prohibited by law and if the information disclosed is not specifically required to be kept secret in the interest of national defense or the conduct of foreign affairs. Protection is also provided for any disclosure made to the Special Counsel of the Merit Systems Protection Board, or to the Inspector General of the Department of State and the Foreign Service or of an agency, or to specially designated individuals, if the

disclosure is made in the reasonable belief that the information evidences the matters discussed in the preceding sentence.

Subsection (b) (3) sets forth specific protection for individuals submitting reports, evaluations, or recommendations through separate dissent channels, whether or not the information is in accord with approved policy. This makes specific legislative provision for the dissent channel procedures currently in existence in the Department of State. It is the committee's intent to encourage the best possible reporting from the field and to build into the structure of the Foreign Service and the foreign affairs agencies the maximum possible capability for internal discussion and dissent. Protection of the individual against reprisals for disagreement with approved policies is essential to this process.

Section 105(c) specifically provides that the section does not authorize withholding information from the Congress and prohibits reprisals against individuals who make disclosures to the Congress.

Section 105(d) mandates the establishment of a recruitment program for women and minorities consistent with provisions of the CSRA (*see*, 5 U.S.C. 7201). Furthermore, the section provides for an annual report personally signed by each agency head on the recruitment program established, including any affirmative action plans submitted under section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16), as well as recommendations for administrative or legislative actions which may be appropriate.

Section 105(e) provides that this section does not limit any other affirmative action or equal opportunity program to affect any right or remedy available to an employee or applicant under existing Federal statutes prohibiting discrimination.

CHAPTER 2—MANAGEMENT OF THE SERVICE

This chapter identifies those officials who are primarily responsible for the administration of the Foreign Service and describes their respective functions. It also sets forth again the objective of maximum compatibility among the agencies authorized to use the Foreign Service Act authorities.

Section 201—The Secretary of State

Section 201(a) provides that the Secretary of State shall direct and administer the Foreign Service and coordinate its functions. Section 201(b) provides that those functions which are expressly vested in the Secretary of State by the bill may be performed only by the Secretary of State and not by heads of other agencies utilizing Foreign Services personnel authorities.

Central authority for direction and administration of the Foreign Service was placed with the Secretary of State in 1949 by section 3 of Public Law 81-73, 63 Stat. 111 (1949), which made the Secretary responsible for the overall administration of the 1946 Act. Certain functions under the bill are vested exclusively in the Secretary of State, including: (1) designation of offices abroad as diplomatic in nature; (2) supervision and direction of the Director General; (3) recommendations to the President that members of the Senior Foreign Service be awarded grants of performance pay for especially meritorious

or distinguished service; (4) issuance of regulations regarding local compensation plans; (5) operation of the Foreign Service Institute under chapter 7; and (6) administration of the Foreign Service Retirement and Disability System under chapter 8. As has been the practice in the past, the committee expects that the Secretary of State will continue to consult with the Director of the Office of Personnel Management to achieve necessary coordination between the two personnel systems.

Section 202—Other agencies utilizing the Foreign Service personnel system

Section 202(a) authorizes the Director of the International Communication Agency and the Director of the United States International Development Cooperation Agency, with respect to their respective agencies, the Secretary of Agriculture with respect to the Foreign Agricultural Service, and the Secretary of Commerce, with respect to those employees of the Department of Commerce performing functions transferred to that Department from the Department of State by Reorganization Plan No. 3 of 1979, to utilize the Foreign Service personnel system established by this bill. This section makes clear within the basic Foreign Service legislation how the bill's authorities may be used. This supersedes corresponding provisions in the Foreign Assistance Act of 1961 and in Public Law 90-494, 82 Stat. 810 (1968), concerning the authority of the Director of the International Communication Agency, which are repealed by section 2205 of this bill.

Section 202(b) makes clear that, except for those functions expressly reserved by the bill to the Secretary of State, heads of agencies which are authorized to utilize the Foreign Service personnel system shall exercise the functions vested in the Secretary by the bill for their respective agencies. This section derives from the definition of "Secretary" contained in section 102(a) (10).

The committee notes that, at present, the Agency for International Development does not possess a Foreign Service officer corps, due partly to the fluctuating program levels of the agency and the specialization of its personnel. The committee believes that development assistance constitutes a vital aspect of United States foreign policy and that AID must be recognized as a partner in the foreign policy effort with the other foreign affairs agencies. There is certainly no doubt from its activities overseas and its interrelationships with other agencies at posts that development personnel serve vital functions. The committee therefore urges AID to seek full use of the authorities in this bill, with the goal of forming a Foreign Service officers corps to the extent practicable. The committee also urges the Agency to seek greater use of the chapter 5 authorities permitting transfers to and from the other foreign affairs agencies.

Section 203—Compatibility among agencies utilizing the Foreign Service personnel system

Section 203(a) explicitly mandates maximum compatibility in the management and administration of the Foreign Service personnel system among all agencies authorized to utilize that system. Sec-

tion 203(a) extends to all agencies with Foreign Service personnel authority the policy of section 5 of Public Law 90-494, 82 Stat. 810 (1968), which prescribes that the Foreign Service information officer personnel system shall be compatible within the Foreign Service officer personnel system. To accomplish the goal of maximum compatibility, the section directs regular consultation between the heads of the other agencies and the Secretary of State.

Section 203(b) preserves the authority of the individual heads of agencies over their own personnel. This is consistent with current practice.

The Committee has found that compatibility promotes efficiency in the management and administration of the Service and thereby promotes U.S. foreign policy endeavors. This provision clarifies present practice and highlights the necessary and desirable working relationships among the agencies concerned with foreign affairs. Unlike the situation in domestic policy agencies, where different purposes and mandates exist, the foreign affairs agencies together serve the needs of United States foreign policy. No one agency can ignore the activities of the others without eventually jeopardizing foreign policy objectives. This is particularly true at posts overseas, where representatives of the foreign affairs agencies, as well as of some domestic agencies, must work together in order to serve U.S. objectives. The "country team" concept operates well where consultation and coordination occur regularly. The committee expects that the agencies will give high priority to this goal.

Section 204—Consolidated and uniform administration of the Service

Section 204 carries forward present provisions of law and practice and encourages the development of uniform policies and procedures among agencies in the administration of the Foreign Service personnel system, as well as encouraging consolidation of personnel functions where feasible. Consolidations pursuant to this section shall be in accordance with section 23 of the basic authorities of the Department of State, as enacted by section 111(a) of the Foreign Relations Authorization Act, Fiscal Year 1979, Public Law 95-426, 92 Stat. 963 (1978).

Section 205—Compatibility between the Foreign Service and other Government personnel systems

Section 205 provides for carrying out the objective of section 101(b) to assure compatibility, to the extent practicable, between the Foreign Service personnel system and other Government personnel systems. This is to be accomplished through consultations among the Secretary of State, the Director of the Office of Personnel Management, the Director of the Office of Management and Budget, and the heads of other concerned agencies as determined by the President. This section continues the policy enunciated in section 5 of Public Law 90-494, 82 Stat. 810 (1968), of administering the Foreign Service personnel system in conformity with the general policies and regulations of the Government to the extent practicable. The provision continues the requirement of consultation with the Office of Personnel Management and the Office of Management and Budget.

Section 206—Regulations; delegation of functions

Section 206 provides the Secretary's basic authority to prescribe regulations and delegate functions to carry out the provisions of the bill. This section consolidates several provisions of existing law. Sections 302 and 303 of the 1946 Act provide authority for regulations by both the President and the Secretary of State. Section 4 of Public Law 81-73, 63 Stat. 111 (1949), which placed central authority for administering the Service with the Secretary of State, also authorized the Secretary to promulgate rules and regulations necessary to carry out his functions, and to delegate authority to perform any function to officers and employees under his direction.

In view of this consolidated single authority to prescribe regulations, it is unnecessary to follow the practice of the 1946 Act in referring to "regulations as the Secretary may prescribe" throughout the bill. Such references have therefore been eliminated.

Section 207—Chief of mission

Section 207 delineates the interagency direction, coordination, and supervision authorities and responsibilities of a chief of mission to a foreign country, as well as the responsibilities of United States agencies conducting activities in a country vis-a-vis the chief of mission. This section is identical in substance to section 12 of Public Law 93-475, 88 Stat. 1439 (1974). This section describes broadly the "country team" concept which is essential to the effective conduct of United States foreign policy abroad. It recognizes the authority and leadership of the chief of mission over Government employees whether they are physically located in the embassy or not. As the chief U.S. representative in the country, the chief of mission must at all times be aware of the activities of those employees responsible to him or her.

Therefore, section 207(a)(1) mandates that the chief of mission, under the direction of the President, shall have full responsibility for the direction, coordination, and supervision of all Government employees in that country, with the sole exception of employees under the command of a United States area military commander. Section 207(a)(2) sets forth the second major responsibility of the chief of mission, which is to keep fully informed at all times of all activities and operations of the United States within the country and to ensure that all Government employees in that country comply fully with all directives of the chief of mission.

Section 207(b) sets forth the complementary responsibilities of the parent agencies which send employees to serve at posts overseas. They are charged with the responsibility to ensure that their employees keep the chief of mission fully and currently informed of their activities and comply fully with all directives of the chief of mission. The responsibility of keeping the chief of mission fully informed also extends to employees under the command of a United States area military commander. The committee emphasizes that, for purposes of section 207, "employee" also covers individuals who are working overseas under contract to a Government agency. As noted, this section does not subject military personnel serving under the command of a United States military area commander (e.g., CINCEUR, CINPAC) to the direction, coordination or supervision of the chief of mission.

Such military personnel in the field report to the President, in his capacity as Commander-in-Chief, through military channels rather than through chiefs of mission. However, the chief of mission must be kept fully and currently informed about the activities and operations of such military personnel.

The authority of the chief of mission is drawn very broadly not only to enable the United States to carry out its foreign policy objectives effectively, but also to ensure the safety and security of Government employees. Should an evacuation, for example, be necessary, the committee expects that all employees, regardless of their parent agency, will comply immediately with an evacuation directive issued by the chief of mission.

Section 208—Director General of the Foreign Service

Section 208 provides that there shall be a Director General of the Foreign Service, who shall assist the Secretary of State in the management of the Service and shall perform such functions as the Secretary directs. This officer will implement policies developed in order to carry out the objectives of the bill. In particular, the Director General is authorized to assist the Secretary of State in carrying out responsibilities for interagency coordination and compatibility under sections 203 through 205 of the bill.

This section alters the appointment procedures for the Director General by making that individual a Presidential appointee, from among the career members of the Senior Foreign Service, subject to the advice and consent of the Senate. Section 201 of the 1946 Act provided that the Service would be administered by a Director General appointed by the Secretary of State from among Foreign Service officers of class 1 or the class of career minister. Section 3 of Public Law 81-73, 63 Stat. 111 (1949), amended the 1946 Act to vest primary authority for administration of the Foreign Service in the Secretary rather than directly in the Director General.

Section 209—Inspector General

Section 209, as amended by a committee amendment, establishes a statutory Office of Inspector General for the Department of State and the Foreign Service patterned after similar offices created in other Federal departments and agencies under the Inspector General Act of 1978, Public Law 95-452, 92 Stat. 1101 (1978).

The Office will be headed by an Inspector General appointed by the President, by and with the advice and consent of the Senate, without regard to political affiliation from among individuals exceptionally qualified for the position by virtue of their integrity, and their demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, and investigations, or their knowledge and experience in the conduct of foreign affairs. The Inspector General will report to and be under the general supervision of the Secretary of State, but could be removed from office only by the President. In the event of any such removal, the President would be required to communicate the reasons for removal to both Houses of Congress. The Secretary of State and other officials of the Department are specifically barred from preventing the Inspector General from initiating, carrying out, or completing any audit or investiga-

tion, or from issuing any subpoena during the course of any audit or investigation.

The Inspector General is required to submit an annual report to the Secretary of State describing significant problems, abuses and deficiencies disclosed during the reporting period, and recommending corrective action. The report will also identify significant previous recommendations on which corrective action had not been completed and would include a summary of matters referred to prosecutive authorities and convictions which has resulted. Reports will be submitted to the Secretary not later than April 30 of each year and will be transmitted to appropriate committees of the Congress within 30 days thereafter, together with any comments the Secretary of State considers appropriate.

The Inspector General will be required to report immediately to the Secretary of State whenever he or she becomes aware of particularly serious or flagrant problems, abuses, or deficiencies, and any such reports will be required to be transmitted by the Secretary to appropriate committees of the Congress within seven days thereafter.

Numerous significant provisions of the Inspector General Act of 1978, Public Law 95-452, 92 Stat. 1101 (1978), are replicated in this bill. One such provision requires the appointment of Assistant Inspectors General for Auditing and for Investigations. These officials will serve to focus attention on these two important oversight activities. The committee expects other Assistant Inspectors General would also be appointed.

Another provision adopts by reference the full panoply of powers given to Inspectors General in section 6 of the Inspector General Act. Those powers include the power to issue subpoenas, to take depositions, and to hire staff independent of the Secretary. Further, these powers provide a high level of independence for the operations of the Inspector General.

The Inspector General is given a specific charge to assure compliance with the employee rights provisions of section 105.

Section 210—Board of the Foreign Service

Section 210 provides legislatively for the Board of the Foreign Service, to advise the Secretary of State on matters relating to the Service, such as promoting the objectives of maximum compatibility among agencies authorized by law to use the Foreign Service personnel system, as well as compatibility between the Foreign Service and the Civil Service. This board was originally established by the 1946 Act. Its functions were transferred to the President by Reorganization Plan in 1965, and the Board was continued thereafter by Executive Order No. 11264, as amended. Its members include the Agency for International Development, the International Communication Agency, the Department of Commerce, the Department of Labor, the Department of Agriculture, the Office of Personnel Management, and the Equal Employment Opportunity Commission. The quasi-judicial functions in labor-management relations and separation for cause heretofore exercised by the Board are now vested by the bill in the appropriate bodies described in chapters 10 and 11, respectively.

Section 211—The Board of Examiners for the Foreign Service

Section 211(a) provides for the establishment of a Board of Examiners for the Foreign Service to develop and supervise the examinations given to candidates for appointment in the Service. The Board shall consist of 15 members, no fewer than five of whom are not Government employees and who possess expertise in the fields of testing or equal employment opportunity. The other members of the Board shall include representatives of agencies which utilize the Foreign Service personnel system as well as representatives of other agencies, such as EEOC and OPM, which have responsibility for employment testing.

The Board is charged under section 211(b) with reviewing the examinations periodically to determine whether they have any adverse effects on equal employment opportunity and are valid indicators of job performance, and to find alternatives as necessary. An annual report to the Secretary of State is also required, together with recommendations for improvement.

The Board of Examiners was originally authorized under section 212 of the 1946 Act. This provision adds the requirement of ensuring that examinations do not undermine the equal opportunity objectives stated in section 101(b)(2)(B) of the bill.

CHAPTER 3—APPOINTMENTS

This chapter consolidates and simplifies the various Foreign Service appointment authorities contained in present law. It contemplates two appointing authorities—the President, who appoints senior officials and Foreign Service officers by and with the advice and consent of the Senate, and the Secretary, who appoints other members of the Service. The chapter also sets forth two types of appointment, career and limited, which may be used to meet the needs of the Service.

Section 301—General provisions relating to appointments

Section 301(a) carries forward the current requirement of sections 515, 522, and 534 of the 1946 Act that only citizens of the United States be appointed to the Service, other than for service abroad as a consular agent or foreign national employee.

Section 301(b) authorizes the Secretary to prescribe examinations for appointment to the Service. Section 212 of the 1946 Act had placed authority to prescribe such examinations with the Board of Examiners of the Foreign Service, but these functions were transferred to the Secretary pursuant to reorganization plan (Reorganization Plan No. 4 of 1965) and Executive Order No. 11264. The Board now exercises these functions under a delegation from the Secretary and it is expected that it will continue to do so. The nature of the examinations will depend upon the type of appointment involved. In particular, Foreign Service officer candidates will continue to be subject to different examinations than candidates for other personnel categories.

The committee recognizes that recruitment is becoming increasingly difficult. Due to the budget cutbacks and pay caps of recent years, the Federal Government is no longer as competitive with the private sector as it once was. The increased burdens on Foreign Service families and the dangers posed by terrorist activity overseas make Foreign Service careers less attractive. However, these same burdens and

dangers face U.S. companies doing business abroad and these companies are seeking solutions such as better insurance policies and higher incentive payments. The committee has taken steps in this legislation to provide incentive payments to attract people to enter and remain in the Foreign Service.

Section 301(c) carries forward in substance section 14 of Public Law 90-494, 82 Stat. 810 (1968), which is repealed by the bill. It provides that veteran status shall be an affirmative factor in considering appointments of Foreign Service officer candidates. The weight to be accorded such status will be set forth in regulations issued by the Secretary. This provision complements, and does not detract from current veteran's preference laws.

Section 301(d) is definitional in nature and is intended to clarify the use of terminology which appears throughout the bill to describe certain members of the Service. Career members of the Service are those serving under career appointments. Members of the Service who serve under limited appointments which are for five years or less, are either career candidates or noncareer members of the Service. For example, individuals who enter the service as candidates for Foreign Service officer must first serve under a limited appointment in accordance with sections 202 and 306(a). Upon successful completion of the limited appointment as a career candidate, an individual may then be appointed by the President as a Foreign Service officer. This simplifies somewhat the procedure under section 516 of the 1946 Act whereby applicants were initially appointed by the President. The concept of career appointment does not apply to chiefs of mission, ambassadors at large, and ministers, who serve at the will of the President.

Section 302—Appointment by the President

Section 302 provides for the appointment of certain members of the Foreign Service by the President, and specifies the effect of a Presidential appointment of a member of the Service.

Section 302(a)(1) states that chiefs of mission, ambassadors at large, ministers, career members of the Senior Foreign Service, and Foreign Service officers shall be appointed by the President by and with the advice and consent of the Senate. This paragraph carries forward the substance of section 501(a) of the 1946 Act with respect to chiefs of mission, and follows section 516 of the 1946 Act with respect to Foreign Service officers, except that Presidential appointment of Foreign Service officers shall now be made only after the candidate has performed successfully under a probationary limited appointment by the Secretary. The Senior Foreign Service is a new personnel category created in this bill whose members will be drawn predominately from the career Foreign Service. This paragraph assures that all such senior career personnel will have equal status, whether they formerly served under a career appointment by the President or by the Secretary.

Section 302(a)(2)(A) authorizes the President, with the advice and consent of the Senate, to confer upon a career member of the Senior Foreign Service the honorary rank of career ambassador. This rank is awarded in exceptional cases of sustained, especially distinguished service.

Section 302(a)(2)(B) preserves the current limitation that the President may confer the personal rank of ambassador, to be effective

for a period not exceeding six months, upon an appointee in connection with a special mission lasting not more than six months. This section is derived from section 501(c) of the 1946 Act. Section 302(a) (2) (C) states that no additional compensation attaches to the conferral of the rank of career ambassador or of the personal rank of ambassador.

Section 302(b), derived from section 571(b) of the 1946 Act, permits a member of the Foreign Service to retain his or her status in the Service while serving in a position outside the Service to which he or she has been appointed by the President. The section provides that such an appointment shall be regarded as an assignment under chapter 5 of the bill. An additional provision permits a member of the Senior Foreign Service to continue to receive the salary of his or her class, to remain eligible for performance pay, and to receive leave to which the member is entitled as a member of the Senior Foreign Service in lieu of receiving the salary and leave of the position to which the member is appointed. The provision precludes the situation where an able senior officer could incur a financial loss by accepting a Presidential appointment involving increased responsibility. A member of the Senior Foreign Service, selected because of outstanding qualifications to serve as a chief of mission or Assistant Secretary, would not be re the career Foreign Service. This paragraph assures that all such senior the bill. This provision parallels 5 U.S.C. 3392(c), which provides for similar retention of status and pay for the Senior Executive Service.

Section 303—Appointments by the Secretary

Section 303 provides that members of the Service not required to be appointed by the President shall be appointed by the Secretary. These appointments include limited appointments in the Senior Foreign Service and as Foreign Service officer candidates (career candidates), as well as limited and career appointments of all other American and foreign national personnel in the Foreign Service. The section combines authorities found in sections 516(c), 522, 531, 541, and 551 of the 1946 Act, as well as section 15 of Public Law 90-494, 82 Stat. 810 (1968).

Section 304—Appointment of chiefs of mission

Section 304 states criteria and procedures designed to ensure that individuals appointed as chiefs of mission are qualified for such appointments.

Section 304(a) (1) carries forward the substance of section 500 of the 1946 Act in asserting that individuals appointed as chiefs of mission should possess clearly demonstrated competence to perform the duties. Among the skills desirable are a useful knowledge of the principal language or dialect of the country in which the individual is to serve, as well as knowledge and understanding of the history, culture, economic and political institutions, and the interests of that country and its people. Contributions to political campaigns must not be considered by the President in appointing ambassadors. The section also reflects the committee's intent that the career members of the Foreign Service should be a primary resource from which chief of mission appointments should be made. These provisions are carried forward from section 104 of the Fiscal Year 1976 Foreign Relations Authorization Act, Public Law 94-141, 89 Stat. 756 (1975), and from

section 120 of the Fiscal Year 1977 Foreign Relations Authorization Act, Public Law 94-350, 90 Stat. 823 (1976).

Section 304(b) (1) requires the Secretary of State to furnish to the President periodically a list of career members of the Foreign Service who are qualified to serve as chiefs of mission, together with pertinent supporting information. Paragraph (2) requires each nominee to file with the Committee on Foreign Relations and the Speaker of the House a report of political contributions by that individual and his or her family within the past four years. This provision is carried forward from section 6 of the Department of State Appropriations Authorization Act of 1973, Public Law 93-126, 87 Stat. 451 (1973).

The committee expresses its concern that, all too often, nominations for appointment as chief of mission to major trading partners and allies are made without regard to the ability of individual nominees to function in the diplomatic arena. This is not to suggest that many political appointees have not demonstrated great competence as ambassadors, and individuals outside the Foreign Service who possess significant foreign policy skills should certainly be considered for ambassadorial appointment. Nonetheless, the Foreign Service is, among other things, a training ground where the very skills needed in our ambassadors are developed. Therefore, the committee urges the President and the Secretary of State to give serious consideration to talented Foreign Service officers for appointment as ambassadors at large as well as small posts overseas. Furthermore, it is expected that Foreign Service personnel from the foreign affairs agencies other than the Department of State will also receive fair consideration for chief of mission nominations.

Section 305—Appointment to the Senior Foreign Service

Section 305 sets forth provisions regarding appointment to the Senior Foreign Service. Section 305(a) provides that appointment to the Senior Foreign Service shall be to a salary class established under section 402 and not to a position. This preserves, with respect to the Senior Foreign Service, the general principle that in the Foreign Service rank follows the person rather than the position. The provision also continues for the senior ranks the practice established by section 511 of the 1946 Act of appointment to a specific salary class.

Section 305(b) provides that the number of members of the Senior Foreign Service serving under limited appointments shall not exceed five percent of the total number of Senior Foreign Service members. Because of the limited tenure of Peace Corps personnel, members of the Senior Foreign Service assigned to the Peace Corps are excluded from this calculation. Also, career appointees in the Senior Executive Service who accept limited Senior Foreign Service appointments, either as career candidates or for limited periods with re-employment rights (*see*, section 310, *infra.*), are excluded from the calculation. Any other individual serving under a limited Senior Foreign Service appointment (including noncareer members and other SFS career candidates) would be considered in the calculation.

The committee notes that this limitation parallels the 10 percent limitation on noncareer personnel at the senior levels of the Civil Serv-

ice. The five percent limitation approximates the number of noncareer top officials in the Foreign Service today. The committee stresses that this limitation must be observed. The Senior Foreign Service is intended to be a reward for excellence for those career members who have put in the time and effort to develop their talents and skills.

Section 306—Career appointments

Section 306(a) requires that each candidate for a career appointment in the Service first serve a trial period under a limited appointment, during which the Secretary shall decide whether or not to offer a career appointment to the candidate, or to recommend the candidate to the President for a career appointment, as appropriate. Under section 309 of the bill, a limited appointment may never exceed five years. Accordingly, no probationary period may exceed that length. For a Foreign Service officer candidate, probationary limited appointments will normally be for four years as is the current practice. Different periods may be prescribed, as appropriate, for various occupational categories of Foreign Service personnel. For example, a single year should be a sufficient probationary period in some cases.

The limited appointment trial period prescribed in this subsection is adapted from two provisions of existing law. Section 516(c) of the 1946 Act, enacted in 1977, provides that Foreign Service officer candidates may be given limited appointments of up to five years as Foreign Service Reserve officers. (The 1979 Act abolishes the Foreign Service Reserve as such.) Section 15(a) of Public Law 90-494, 82 Stat. 810 (1968), provides that Foreign Service Reserve officers must be given unlimited tenure or separated from the Service between their third and fifth years as Reserve officers.

Career members of the Senior Foreign Service will normally be appointed by the promotion (*see*, section 601) of career personnel who will have established records of performance in the Foreign Service. Career candidates for the Senior Foreign Service will be appointed from outside the career Service only in extraordinary cases where the needs of the Service cannot otherwise be met. The committee understands that such candidates will serve not less than four years in a probationary status so that their qualifications for career status can be thoroughly evaluated.

Section 306(b) states that decisions by the Secretary concerning whether or not to offer, or to recommend to the President, any career appointment shall be based upon the recommendations of boards composed entirely or primarily of career members of the Service who will evaluate the fitness and aptitude of the candidates for the work of the Service. This extends for general application in the Service (including the Senior Foreign Service) the "tenure board" procedure currently used to evaluate Foreign Service officer candidates. The committee believes that past practice has indicated that this procedure of evaluation by one's peers has been effective. Together with the safeguards of the grievance procedures established in Chapter 11, this procedure helps to ensure that appointment decisions will not be arbitrary.

Section 307—Entry levels for Foreign Service officer candidates

Section 307 states that a Foreign Service officer candidate shall be initially assigned under section 404 to a salary class no higher than

class FS-5 unless the Secretary determines that an individual's qualifications and experience and the needs of the Service make assignment to a higher class necessary or unless the candidate is currently serving under a career appointment in the Service at a salary rate equal to or exceeding that of class FS-4. The first exception is intended for lateral entrants from outside the Foreign Service, while the second exception would be applicable to the lateral transfer of a career member from another Foreign Service category to Foreign Service officer.

This section is derived in part from sections 516 and 517 of the 1946 Act. Section 516 provided that Foreign Service officers would normally be appointed to class 8, although an initial appointment to class 7 could be made if the age, experience, and other qualifications of the appointee warranted it. Section 517 permitted appointment of Foreign Service officers with four years of service with a Government agency (or three years of such service if over age thirty) to any Foreign Service officer class determined to be warranted by the candidate's age, experience, and qualifications.

Section 307 continues the policy of a normal Foreign Service officer entry level, while permitting lateral entry to higher salary classes where individual qualifications warrant it. However, this section avoids specifying the factors in as rigid a manner as section 516 of the 1946 Act had done. The section is not intended to preclude or limit programs designed to encourage entry at higher levels by women or members of minority groups. The committee expects such appointments to be based on the qualifications of the individual and the needs of the Service.

The normal entry level of class FS-5 specified by this section is roughly comparable to class 6 under the present Foreign Service officer salary schedule. This expands somewhat the normal entry range for officer candidates for competitive purposes and in recognition of the broader range of educational backgrounds and experience of Foreign Service officer candidates in recent years.

Section 308—Recall and reemployment of career members

Section 308 carries forward the authority of the Secretary to recall to active duty any retired career member of the Service, and to reappoint former career members without requiring them to complete a new period in probationary status.

This section is derived from section 520 of the 1946 Act. Section 520 required reappointment by the President except where the officer was recalled on a temporary or limited basis to a class no higher than that held at the time of retirement. Section 308(a) requires Presidential appointment only where the recall would involve promotion into or within the Senior Foreign Service. This is in keeping with section 601 (a) of the bill, which provides that promotions within the Foreign Service Schedule (*cf. section 403*) are affected by assignment by the Secretary and not by appointment by the President to the higher class, and that promotion into and within the Senior Foreign Service shall be by Presidential appointment.

Section 308(b) also provides that former career members of the Service reappointed in the Service need not serve probationary appointments under section 306 and may be assigned to a salary class appropriate to their qualifications.

Section 309—Limited appointments

Section 309 provides for limited appointment in the Service which may not exceed five years and, with the exception set forth in section 311(a), may not be extended or renewed. A subcategory of limited appointments, the temporary appointment, is defined as an appointment limited to a period of one year or less. This subcategory is necessary to facilitate the identification of those limited appointments whose incumbents are ineligible, under Civil Service laws, for certain benefits such as leave accrual and participation in the Civil Service Retirement and Disability System.

The committee notes that section 504(a) specifies that career Foreign Service personnel shall be obligated to serve abroad, and shall be expected to serve abroad for substantial portions of their careers. Consistent with this principle, section 308 contemplates that individuals receiving limited appointments in the Service will be obligated and expected to serve abroad.

Section 309 is derived in part from section 531 of the 1946 Act, which gave the Secretary authority to make temporary or limited appointments in the Foreign Service Reserve. The language of section 309 is more generalized than its predecessors, but it continues to protect the basic career structure of the Foreign Service personnel system.

Section 310—Reemployment rights following limited appointment

Section 310, derived from section 528 of the 1946 Act, provides that an employee of a Federal agency who accepts a limited appointment in the Service with the consent of his or her agency head is entitled to be reemployed in accordance with section 3597 of title 5, United States Code, as added by section 2301 of the bill and discussed below.

Section 311—Employment of family members of Government Employees

Section 311 prescribes policies for the employment in the Foreign Service of family members of Government personnel abroad, and is derived from section 413 of the Foreign Relations Authorization Act, Fiscal Year 1978, Public Law 95-105, 91 Stat. 844 (1977), and from section 401(a)(2) of the Foreign Relations Authorization Act, Fiscal Year 1979, Public Law 95-426, 92 Stat. 963 (1978).

Section 311 provides that equal consideration shall be given to hiring qualified family members of Foreign Service and other Government personnel for positions abroad, including foreign national positions, not customarily filled by career personnel. This does not, however, preclude the possibility that, in appropriate instances and on a temporary basis only, dependents may fill positions which are usually filled by Foreign Service personnel. The committee notes that some of the more interesting jobs offered abroad are those which are filled by career personnel, but which become vacant for several months or longer, due to the inability to find a replacement immediately or to a delay in the arrival of a replacement. This section would permit the temporary employment of qualified dependents to fill such career positions. In no case may this authority be used to avoid hiring career personnel or to delay the arrival of a replacement. Its effect should be to provide needed personnel to fill employment gaps which unavoidably occur at posts overseas. Accordingly, section 311(b) specifically

adds the caveat that employment of family members must not be used to avoid fulfilling the need for full-time career positions.

Section 311(a) also provides that such family members will serve under renewable limited appointments (an exception to section 309 which provides that limited appointments are nonrenewable), and will be paid either under the Foreign Service Schedule or under a local compensation plan. The choice between an American and a local salary rate will normally depend upon the usually applicable pay schedule for the position concerned, although the committee urges the Department to utilize the Foreign Service rate wherever possible. The committee recognizes that this section does not solve the problem of the Foreign Service spouse or dependent who is forced to give up a Government position in order to accompany a Foreign Service employee abroad. The solution lies in providing reemployment rights and credit toward career status in the Civil Service. Currently, such status cannot be earned in temporary jobs. It is generally earned only through permanent employment and then only if an individual remains in such a position for at least three years without a break in service of more than thirty days. The mobility of Foreign Service life and the fact that all Government positions abroad are temporary, except for those allocated to the career members of the Service, make it virtually impossible for a spouse or dependent to earn Civil Service status. The committee therefore urges the Secretary of State to continue consultations with the Director of the Office of Personnel Management to seek some workable solution to this problem. The committee expects to be kept advised of progress in this area.

A committee amendment strikes out section 311(c) which would have authorized the Secretary of State to prescribe regulations to guide all agencies in the employment at posts abroad of family members of Government personnel. The Office of Personnel Management retains the authority to prescribe such regulations.

Section 312—Diplomatic and consular commissions

Section 312 combines several provisions of law relating to diplomatic and consular commissions. Specifically, it provides for commissioning of diplomatic and consular officers by the President on the recommendation of the Secretary of State, with the advice and consent of the Senate. The practice of providing individuals with diplomatic and consular commissions is derived from international practice and is necessitated both by international treaty requirements and by numerous Federal and State laws. The commission itself permits the holder to exercise specified diplomatic and consular functions necessary to the conduct of foreign policy.

This provision combines sections 512, 524, and 533 of the 1946 Act which relate separately to the commissioning of Foreign Service officers, Foreign Service Reserve officers, and Foreign Service staff personnel, respectively. The authority contained in section 533 of the 1946 Act for the Secretary of State to commission a staff officer or employee as vice consul is expanded to permit such commissions to be granted to any member of the Foreign Service who is a United States citizen. This authority will be available, for example, to commission as a vice consul, a Foreign Service officer candidate serving

under a probationary appointment. The substance of section 11 of Public Law 90-494, 82 Stat. 810(1968), relating to the commissioning of Foreign Service information officers as diplomatic or consular officers, is also included as part of section 312.

In requiring that members of the Service commissioned under this section perform all official functions under such commissions, section 312(a) is consistent with the provisions of section 512, 524, and 533 of the 1946 Act. In providing that members of the Service with diplomatic or consular commissions may perform any function which any category of diplomatic officer (other than a chief of mission) or consular officer is authorized by law to perform, section 312(b) follows modern diplomatic and consular practice.

Section 312(c) adopts the language of section 513 of the 1946 Act which states that the Secretary of State shall define the limits of consular districts. This and all other functions of the Secretary of State under section 312 are exclusively functions of the Secretary of State and may not be exercised by any other agency head.

CHAPTER 4—COMPENSATION

Chapter 4 sets forth the compensation structure for the Foreign Service, which is based on performance and conditions of service. It differs from existing law chiefly in its simplification and realignment of the salary structure and in its provisions for performance pay.

Section 401—Salaries of chiefs of mission

Section 401(a) provides that the salary level of a chief mission shall be set at one of the annual rates provided by law for levels II through V of the Executive Schedule. An exception is provided for members of the Senior Foreign Service who are appointed as chiefs of mission. Under section 302(b), discussed above, they may elect to receive the salary of their class and to remain eligible for performance pay.

This section is consistent with section 411 of the 1946 Act, under which chief of mission positions were divided into four salary classes ranging from level II to level V of the Executive Schedule. The revised provision does not require the President to use the entire range of salary rates. He could prescribe a single salary rate for all chiefs of mission.

Section 401(b) sets forth a transition mechanism for appointment of new chiefs of mission. It provides that the salary of a chief of mission commences upon the effective date of appointment (the date he or she takes the oath of office) and may be continued for up to fifty days after a chief of mission has relinquished charge of the mission, even if a successor has been appointed, and subject to the requirement that the former chief of mission perform such functions as the Secretary deems necessary.

Section 401(b) carries forward the substance of section 431 of the 1946 Act. The provisions in section 431(a) of that Act stating that a chief of mission is not entitled to salary while absent from his post without authorization or justification has been deleted as unnecessary. A further provision in section 431(a) of the 1946 Act which, with respect to a person appointed as chief of mission at a second post,

delineates entitlement to a higher salary class is deleted as superfluous in view of the general prohibition in 5 U.S.C. 5533 against dual pay for more than one position. Section 431(c), authorizing supplementary compensation for a Foreign Service officer appointed chief of mission at a salary less than his or her Foreign Service salary, has been replaced by the option, in section 302(b) of this bill, for a member of the Senior Foreign Service to receive his or her Senior Foreign Service salary in lieu of the salary of the appointed position.

Section 402—Salaries of the Senior Foreign Service

Section 402 authorizes the President to prescribe salary classes for the Senior Foreign Service, as well as appropriate titles for each class. The salary rates are to be set consistent with the maximum and minimum rates payable for the Senior Executive Service which pursuant to 5 U.S.C. 5382 may not be more than the rate payable for level IV of the Executive Schedule. These rates will be adjusted at the same time and in the same manner as rates of basic pay are adjusted for the Senior Executive Service.

It is expected that, at the outset, the President will prescribe three salary classes for the Senior Foreign Service titled Counselor, Minister-Counselor, and Minister. These would replace present classes 2, 1, and career minister under the 1946 Act.

Section 403—Foreign Service Schedule

Section 403, as amended by a committee amendment, establishes a single Foreign Service Schedule of ten classes for members of the Service who are United States citizens and who are not compensated under any of the other salary provisions of Chapter 4. Excluded from this schedule, for example, are chiefs of mission (*see*, section 401), members of the Senior Foreign Service (*see*, section 402), foreign national employees (*see*, section 408), and consular agents (*see*, section 409).

The new Foreign Service Schedule established under section 403 consists of ten salary classes, numbered from the lowest, FS-10, up to the highest, FS-1, and corresponding to General Schedule grades GS-5 to GS-15. Each class must have fourteen salary steps, the first ten corresponding to those in the appropriate GS grade, and the remaining four steps in increments equal to the average increment of the first ten steps in that class. Any salary paid under the Schedule may not exceed the rate of basic pay payable for level V of the Executive Schedule. The Secretary of State is authorized to prescribe appropriate regulations to carry out this section.

The single schedule prescribed by section 403 replaces the two separate schedules under sections 412, 414, and 415 of the 1946 Act for Foreign Service officers, Foreign Service Reserve officers, and Foreign Service staff, respectively. The unified schedule prescribed by section 403 is intended to overcome difficulties caused by the present overlapping salary schedules, especially between Reserve and staff personnel, as well as to simplify and improve personnel administration.

Section 404—Assignment to a salary class

Section 404(a) requires the Secretary to assign to appropriate salary classes all Foreign Service officers and Foreign Service personnel other than personnel abroad who perform routine duties and are paid

under section 407, and family members of Government employees who are paid in accordance with local compensation plans. This provision marks a change from section 413 of the 1946 Act, under which Foreign Service officers are appointed by the President to a particular salary class. The 1946 Act has produced a system in which each promotion of a Foreign Service officer requires a new appointment and Senate confirmation. By separating appointments from salary classification below the senior levels, the bill avoids the inequitable delays which have attended promotions of Foreign Service officers, as compared with promotions of Reserve officers of comparable rank who are promoted without the need for reappointment.

Section 404(b)(1) expresses the rank-in-person nature of the Foreign Service by stating that the salary class to which a member of the Service is assigned is not affected by the position or post to which he or she is assigned. This means that rank in the Foreign Service is personal as in the military, and not dependent on the position to which the individual is assigned. Rank-in-person has been a basic principle of the Foreign Service personnel system since the Foreign Service was first established, and is necessary to the functioning of this highly mobile corps.

Section 404(b)(2) states, principally as a cross-reference, that a change in the salary class of a member of the Senior Foreign Service or a member paid under the Foreign Service Schedule must be in accordance with the promotion provisions of chapter 6 of this Act, except as authorized by reduction-in-force procedures specified in chapter 35 of title 5, United States Code. The Secretary is authorized to prescribe implementing regulations for this section. The regulations must be consistent with the relevant provisions of subchapter VI of chapter 53 of title 5, United States Code.

Section 405—Performance pay

Section 405 authorizes the award of additional compensation for outstanding performance to career members of, and career candidates for, the Senior Foreign Service. These awards of performance pay parallel those available to members of the Senior Executive Service under 5 U.S.C. 5384.

Section 405(a) provides that such awards shall be paid in a lump sum, shall be in addition to basic salary, and shall not be limited to any ceiling based on the amount of compensation received by a chief of mission or other member of the Service. The first of these provisions parallels 5 U.S.C. 5384(a)(2). The second supersedes a long-standing administrative limitation that a chief of mission must earn at least \$100 per year more than any subordinate personnel on post. The committee believes that this limitation has no practical utility, particularly in light of the fact that members of the Senior Foreign Service who are appointed as chiefs of mission have the option, under section 302(b), of retaining the salary and benefits attaching to them as Foreign Service officers.

Section 405(b) states that performance pay awards shall take into account criteria established by the Office of Personnel Management for performance awards under 5 U.S.C. 5384 and for rank awards under 5 U.S.C. 4507 to members of the Senior Executive Service.

Criteria and requirements unique to the Foreign Service may also be taken into account. The section also establishes limits on the number and amount of performance pay awards which are consistent with the limits imposed with respect to the Senior Executive Service under 5 U.S.C. 4507 and 5 U.S.C. 5384. No more than fifty percent of the members of the Senior Foreign Service may receive performance pay awards in any one year. These awards may not exceed twenty percent of the member's basic rate of salary. In addition, up to five percent of the members of the Senior Foreign Service may receive performance pay awards up to \$10,000, and one percent may receive such awards up to \$20,000, even if such awards exceed the twenty percent limitation.

Section 405(b) (4) limits the total salary plus performance pay received by any member of the Senior Foreign Service to the rate payable for level I of the Executive Schedule. The same limitation applies to members of the Senior Executive Service by 5 U.S.C. 5383(b).

Section 405(c) provides that performance pay awards subject to the 20 percent limitation in subsection (b) (2) above shall be determined on the basis of recommendations by selection boards. This provision parallels 5 U.S.C. 5384(c), which states that agencies shall award performance pay to members of the Senior Executive Service based on the recommendations of performance review boards established pursuant to 5 U.S.C. 4314. The determination of the total amount which shall be made available in any one year is a budgetary determination left with the individual heads of the agencies, which means that members of the Senior Foreign Service are not automatically entitled to performance pay.

Section 405(d) authorizes the President to make grants of performance pay exceeding the twenty percent limitation as provided in section 405(b) (3). Such Presidential awards, up to \$10,000 to not more than five percent of the Senior Foreign Service and up to \$20,000 to not more than one percent of the Senior Foreign Service, shall be based upon recommendations by the Secretary of State. In order to produce a list of recommendations, the Secretary of State will receive annually from all concerned agencies nominations of Senior Foreign Service personnel who have performed especially meritorious or distinguished service. The agency nominees will be reviewed by special interagency selection boards, which shall include public members. The Secretary of State will then make recommendations to the President on the basis of the review and evaluation by these boards.

Section 406—Within-class salary increases

Section 406 combines the substance of section 625 and 642 of the 1946 Act, which provide separately for periodic within-class salary increases for different categories of Foreign Service personnel whose work has met the requisite standards. These increases parallel the step increases provided to Civil Service employees under subchapter III of chapter 53 of title 5, United States Code.

Section 406(a) makes two principal changes in existing law. It establishes that step increases shall be granted after 52 weeks of service for steps 1 through 9, and after 104 weeks of service for steps 10

through 13. Second, the section provides for the denial of a step increase on the basis of a selection board finding that a member does not meet the standards of performance for his or her class. The authority in the 1946 Act to grant additional step increases for especially meritorious performance is retained in section 406(b).

The revisions accomplished by this section are intended to use performance relative to an individual's peers as the basis for the grant or denial of step increases. Selection board procedures should assure fair and uniform consideration of similarly situated individual employees. Mediocre and poor performers will not be rewarded while outstanding individuals will receive additional compensation.

Section 407—Salaries for Foreign Service personnel abroad who perform routine duties

Section 407(a) authorizes the Secretary under certain circumstances to establish salary rates for Foreign Service personnel which are lower than those prescribed in the Foreign Service Schedule. The lower limit is set at the then applicable minimum wage rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 207(a)(1)).

Section 407(b) specifies the individuals who may be hired at these salary rates. They must be United States citizens recruited abroad who are not available or are not qualified for assignment to another Foreign Service post and who perform duties of a more routine nature than are generally performed by Foreign Service personnel assigned to the lowest salary class in the Foreign Service Schedule. FS-10. This authority permits the hiring of individuals who are U.S. citizens residing abroad to perform routine work at posts abroad, either, on a full-time or part-time basis, where it is unnecessary or unproductive to assign the job to a member of the Foreign Service. It is derived from section 415(b) of the 1946 Act.

Section 408—Local compensation plans

Section 408(a)(1) requires the Secretary to establish compensation plans for foreign national employees of the Service, and for United States citizens employed in the Service abroad pursuant to section 311 of the bill, who are family members of Government employees. This provision follows section 444(a)(1) of the 1946 Act in directing that, consistent with the public interest, local compensation plans shall be based upon prevailing wage rates and compensation practices in the locality. It also directs that local compensation plans must provide for compensation of family members employed pursuant to section 311 at rates no less than the minimum wage rate set by the Fair Labor Standards Act.

The section also provides that leaves of absence with pay (such as annual and sick leave) may be granted to local employees in accordance with local law or customs without regard to the limitation on such leave contained in 5 U.S.C. 6310. An express reference to participation in local social security plans is added to emphasize the objective of maximum compliance with compensation benefits provided under local law. This provision is carried forward from section 402 of the Foreign Relations Authorization Act, Fiscal Year 1979, Public Law 95-426, 92 Stat. 963 (1978). It permits the agencies to comply fully with mater-

nity and sick leave provisions of certain local social insurance programs which would otherwise be prohibited under U.S. law, thus preventing the agency from participating in the entire local program. Local social insurance programs are often comprehensive and frequently include health programs and various types of income maintenance programs such as sick leave and retirement. In order to participate on behalf of its local staff, the Department usually must participate in all phases of the local social insurance programs. If a particular country plan happens to provide more leave than is authorized under U.S. law, local employees of the Government are denied the opportunity to participate in any of the other programs, including retirement.

The establishment of local compensation plans under which local employees receive prevailing local wage rates and benefits tends to eliminate complaints from host governments and employees over compensation issues, and improves morale. It also avoids undesirable litigation which would result from failure to comply with certain labor laws and practices in foreign countries.

Section 408(a) (2) is also derived from section 444 of the 1946 Act. It authorizes the Secretary to make supplemental payments to Civil Service annuitants who are former foreign national employees or their survivors in order to offset losses caused by the appreciation of a foreign currency relative to the dollar. Such payments are permitted only where the employee's salary was fixed in terms of the foreign currency and the retirement benefits received by the annuitant are less than the average retirement benefits received by retirees from comparable positions in local organizations.

Section 408(b) authorizes Government entities to administer their programs for foreign national employees or family members of Government personnel serving abroad in accordance with section 408 and other applicable provisions of this bill. This subsection follows closely section 444(b) of the 1946 Act.

In order to promote efficiency and uniformity among agencies, section 408(c) authorizes the Secretary of State to prescribe regulations governing the establishment and administration of local compensation plans under this section for all Government agencies and establishments. It is intended that the authority of the Secretary of State includes classification standards for foreign national positions. This authority was recently granted pursuant to section 107(b) of Public Law 96-60, 93 Stat. 397 (1979), which amended section 444(b) of the 1946 Act.

The committee expects, consistent with the General Accounting Office recommendations in its report entitled "State Department Should Improve Foreign National Pay Setting", that the Secretary of State will continue his ongoing efforts to improve coordination of foreign national pay systems and wage schedules with other agencies, notably the Department of Defense. The committee notes that this effort will be consistent with the fact that the foreign affairs agencies often compete with different local employers than does the Department of Defense, which will at times result in differing pay systems. The committee also expects that other agencies will consult closely with the Secretary of State in the administration of employment programs under this section.

Section 409—Salaries of consular agents

Section 409 directs the Secretary of State to establish salary rates for consular agents consistent with prevailing wage rates in the particular locality and the workload of the consular agency. In the case of consular agents who are United States citizens, the salary rate may not be less than the then applicable minimum wage rate specified under the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)).

Consular agents may be either United States citizens or foreign nationals. Their function is to provide consular and related services for Americans and foreign nationals at locations abroad where no Foreign Service post is located. The committee believes that the existence of consular agencies is an efficient and desirable way to represent U.S. interests where it is not feasible or practical to establish a full-fledged post. Given the increase in travel by Americans in recent years, consular agents often provide the only assistance available, particularly in larger countries where sheer distances make communication with a post difficult.

Section 410—Compensation for imprisoned foreign national employees

Section 410 reenacts section 444(c) of the 1946 Act, without substantive change. The provision was originally enacted as part of the Foreign Relations Authorization Act, Fiscal Year 1978, Public Law 95-105, 91 Stat. 844 (1977).

Section 410(a) authorizes agencies to compensate current or former foreign national employees for periods of imprisonment by a foreign government determined by the Secretary of State to have resulted from employment with the United States Government. This compensation is limited to an amount approximately equal to the salary and benefits the employee would have received had the employee been employed by the United States during the period of imprisonment. Agency heads are also authorized to exercise with respect to imprisoned foreign national employees or former employees the authorities provided under subchapter VII of chapter 55 of title 5, United States Code, relating to missing American employees.

Section 410(b) provides that a period of imprisonment compensable under section 410(a) is to be considered creditable employment for purposes of other benefits, except for Civil Service retirement (unless the employee was a participant in the Civil Service Retirement and Disability System) and for compensation for work injuries unless the individual was employed by the Government at the time of imprisonment.

Section 410(c) provides that a claim for compensation under this section must be filed within three years after the release of the claimant from imprisonment or within three years after the claimant's first opportunity thereafter to file a claim. The appropriate agency head shall determine the date of the claimant's first opportunity to file a claim.

Section 410(d) continues the authority of the Secretary of State to prescribe regulations governing payments under this section for the guidance of all agencies.

The committee notes that over the years there have been numerous instances of harassment by arrest and detention of foreign nationals

who are or have been employed by United States embassies and consulates. Usually in such cases, employees are detained only for a few hours or days and suffer no loss in compensation. However, since World War II, some 40 foreign nationals have been imprisoned because of their employment by the Government for such long periods that they have had to be separated from the Service and their salary has been terminated. In some cases, arrests have occurred following the employee's separation from the Service. This might, for example, occur following a break in diplomatic relations which forces the U.S. embassy to close and to withdraw its personnel. In such circumstances, alien employees are separated and may be arrested sometime thereafter and held for interrogation or reprisal.

Employees and former employees who have been arrested in the past have frequently been charged with espionage or treason because of their association with the United States. Imprisonment is used as a method of harassing the United States and discouraging capable employees from working at U.S. embassies and consulates.

The committee notes that the United States relies heavily on alien employees to provide essential support services to embassies, consulates, and other U.S. missions. Many alien employees spend their entire career working for the United States. They perform their duties faithfully and well and certainly deserve fair treatment from the United States. An individual who, as a result of service to the United States, suffers imprisonment, deserves to be compensated at the very least for the income lost during the period of imprisonment. This section makes it possible for the United States to pay the compensation necessary to restore that lost income.

Section 411—Temporary service as principal officer

Section 411, with a committee amendment, authorizes the Secretary of State to provide additional compensation, notwithstanding section 5535 of title 5, United States Code, to a member of the Service who serves temporarily as principal officer during the absence of incapacity of the principal officer. The additional compensation is limited to the difference between the member's salary and the basic salary provided for the principal officer. The Secretary of State will determine the initial period which must elapse before the additional salary payments will be made, so that members of the Service who assume the duties of principal officer for one or two days, for example, are not eligible for additional compensation. Present practice is to provide the additional compensation if the member serves as principal officer for longer than 30 days. The committee believes this is appropriate, given the heavy responsibilities attendant upon the principal officer position. If these responsibilities of principal officer are shouldered by a deputy for a significant time period, that deputy should certainly receive the compensation which goes with the job.

Section 411 combines the provisions of sections 421 and 422 of the 1946 Act, which deal separately with temporary service as the head of a diplomatic and a consular post. Since the substance of the two sections is the same, it is unnecessary to preserve the distinction between diplomatic and consular posts.

Section 412—Special differentials and premium pay

Section 412(a) authorizes the Secretary to pay special differentials, in addition to other compensation, to Foreign Service officers who are required to perform additional work on a regular basis in substantial excess of normal requirements which is not the basis for premium pay. This subsection is identical in substance to section 451 of the 1946 Act. The committee expects that, in implementing this section, the heads of agencies will provide this compensation to any officer who meets the criteria, subject to budgetary considerations and the requirements of subsection (b) of this section. There should be no arbitrary limits set on the number of individuals who can receive special differentials in a given year.

Subsection (b) provides that members of the Service, other than members of the Senior Foreign Service, shall be entitled to receive premium pay to the extent provided under subchapter V of chapter 55 of title 5, United States Code. This section merely makes the Foreign Service comparable to the Civil Service in this regard. The bill does not affect the applicability of the Fair Labor Standards Act concerning overtime pay for members of the Foreign Service in the United States.

Section 413—Death gratuity

Section 413 reenacts section 14 of the Department of State Basic Authorities Act of 1956 (22 U.S.C. 2679a), which provides for the payment of death gratuities to dependents of Foreign Service employees, including U.S. representatives to international organizations or commissions and foreign national employees. Gratuities are equivalent to one year's salary at the time of death.

Section 413(b) and (c) set forth the criteria for payment of the gratuity and the dependents to whom it shall be paid. Section 413(d) defines the terms used in this section.

Death gratuities were first authorized in 1974 in recognition of the heightened risks from terrorist acts abroad faced by Foreign Service employees abroad in the line of duty.

CHAPTER 5—CLASSIFICATION OF POSITIONS AND ASSIGNMENTS

Chapter 5 continues the existing authority of the heads of agencies to classify Foreign Service positions in each agency and at posts abroad, and to assign Foreign Service personnel to those positions.

Section 501—Classification of positions

Section 501(a) restates the Secretary's basic authority to designate and classify positions to be occupied by members of the Foreign Service including positions at posts abroad and in the Department, but excepting chief of mission positions. Position classifications will correspond to the Foreign Service salary classes established by chapter 4, and will be classified without regard to chapter 51 of title 5, United States Code, relating to classification in the Civil Service. In classifying positions at posts abroad, the Secretary is directed to give appropriate weight to job factors relating to overseas service and to compensation practices of U.S. corporations abroad. Section 501 combines and simplifies the two separate subsections of section 441 of the 1946 Act.

Section 501(b), added by a committee amendment, sets forth the criteria pursuant to which positions in the United States may be designated as Foreign Service positions. It provides that a position in the United States may be designated as a Foreign Service position only if the Secretary determines: that the functions of the position cannot be performed without significant experience abroad in the conduct of foreign affairs; or that the position is required to be designated as a Foreign Service position (i) to provide opportunities for rotation of members of the Service from assignments abroad to assignments in the United States, or (ii) to provide training for future assignments abroad.

In addition, before designating a position as Foreign Service, the Secretary must determine that the advantages of continuity of incumbency or specialized skill in the position do not outweigh the advantages of it being designated a Foreign Service position. A position in the United States which does not meet the criteria may not be designated as a Foreign Service position. The criteria for position designation provided in section 501(b) are not intended to alter the provisions of the regulations issued by the Agency for International Development on May 1, 1979, pursuant to section 401 of the International Development and Food Assistance Act of 1978, Public Law 95-424, 92 Stat. 937 (1978). These regulations continue to have the force and effect of law.

Section 502—Assignments to Foreign Service positions

Section 502(a) (1) provides that the Secretary may assign a member of the Foreign Service to any position in the Service in which the member is eligible to serve, regardless of agency, provided that the head of the concerned agency concurs. Section 502(a) (2) states that members of the Service must not be assigned to a particular geographic area solely on the basis of race, ethnicity, or religion. While an individual's race, religion, or ethnicity may certainly contribute to the interests, skills, and expertise of that individual, the controlling factor in assignments must be the interests, skills, and expertise of the individual. Race, religion, and ethnicity should not be considered the determining factor in a job assignment. Moreover, the provisions of section 105(b) prohibit the Secretary from making assignments for improper reasons such as reprisal.

Section 502(b) states the general policy that Foreign Service positions will normally be filled by the assignment of members of the Service. Recognizing that the Foreign Service practice of setting specified tours of duty may make it impossible to observe this policy at all times, the paragraph provides some flexibility by allowing the Secretary to assign non-Foreign Service employees of the Department and personnel of other agencies (under interagency agreements) to Foreign Service positions. The committee expects, however, that these assignments will be for a specific time period or tour to the extent practicable. In addition, the section provides that Senior Foreign Service positions may be filled by other members of the Service, thus permitting assignments of outstanding middle-grade officers to positions of increased responsibility as a part of their career development.

The committee notes that this provision reflects current practice and wishes to emphasize the importance of assigning members of the Serv-

ice to Foreign Service positions as regularly as possible. When a Civil Service employee is appointed to a Foreign Service position, the employee could hold the job for an indefinite period. Hence, appointing Civil Service employees to Foreign Service positions may block the use of those positions for rotations or promotions. This practice, should it become common, would severely curtail the career development patterns which the committee seeks to encourage through this legislation.

Section 502(c) authorizes the President to assign a career member of the Service as charge d'affaires or to act otherwise as head of a mission for such period as necessary. This subsection carries forward the substance of section 501(b) of the 1946 Act, which provided for Presidential assignment of Foreign Service officers to act as charge d'affaires or Minister resident.

Section 503—Assignments to agencies, international organizations, and other bodies

Section 503 combines several provisions of the 1946 Act in authorizing the Secretary to assign a member of the Service for duty in non-Foreign Service positions within the Federal Government as well as with international organizations and other bodies. These assignments provide members of the Service with opportunities for valuable training and work experience, offer other agencies and organizations, such as the Congress, opportunities to benefit from the expertise of members of the Service, and promote a better understanding of the Foreign Service.

Section 503(a)(1) follows section 571(a) of the 1946 Act in authorizing the Secretary to assign a member of the Service to a non-Foreign Service position in another agency or to an international body. Section 503(a)(1) explicitly states that the Secretary's assignment authority extends to assigning a member of the Service to a non-Foreign Service position in the Department.

Sections 503(a)(2) through (4) follow section 574 of the 1946 Act in authorizing the assignment of a member of the Service to a position in the United States with a State or local government, with a Member or office of the Congress, with a public or private nonprofit organization, or for special instruction or training with public or private organizations. There is no longer a percentage limitation on assignments to the Congress, as there was in section 576 of the 1946 Act, since the committee wishes to encourage such assignments. The exchange of views and expertise has proved in the past to be of mutual benefit. Similarly, the committee expects that the Department will emphasize service outside Washington, D.C., so that members of the Foreign Service can maintain regular contact with domestic affairs in the United States.

The committee views this general authority to assign members of the Service to non-Foreign Service positions as one of the most important authorities in the bill. Not only does it permit Foreign Service members to keep themselves informed of current concerns and trends in American life, it also provides information for Americans about the Foreign Service and a valuable source of talent which would not otherwise be available. The committee expects that substantial use will be made of this authority, particularly by the Department of State and the International Communication Agency.

Section 503(b) (1) follows section 571(c) of the 1946 Act in providing that a member of the Service assigned under this section shall receive the salary of his or her Foreign Service class, or, when assigned to a non-Foreign Service position, the salary of the position to which the member has been assigned if it is higher than that of the member. Section 50(b) (2) follows section 571(d) and provides that the salary of a member assigned under this section shall be paid out of the appropriations for salaries of members of the Service, which appropriations may be reimbursed for the costs of salaries and other benefits for members assigned.

Section 503(b) (3) provides that a member of the Service assigned under section 503(a) (4) shall be deemed to be an employee of the House or Senate for purposes of payment for travel and other reimbursable expenses. This new provision will permit an individual assigned to be compensated for travel on official business of the Congress.

Section 503(c) establishes a limitation of four years of continuous service on assignments to positions outside the Foreign Service, unless the Secretary approves an extension due to special circumstances. This limitation is independent of the eight-year limitation on assignments within the United States to either Foreign Service or non-Foreign Service positions contained in section 504(a) of the bill.

Section 504—Service in the United States and abroad

Section 504(a) sets forth the fundamental criterion for membership in the Foreign Service—availability for worldwide assignment. It requires that all career members of the Service shall be obligated to serve abroad. As a result, the anomalous “domestic” Foreign Service personnel category will be abolished and individuals not available for worldwide service will be converted to the Civil Service under section 2104 of the bill. No member of the Service may be assigned to duty within the United States for any period of continuous service exceeding eight years unless the Secretary approves an extension, in special circumstances, of the eight-year limitation. This limitation carries forward the policy of section 571(a) of the 1946 Act. This subsection also requires the Secretary to establish the maximum periods for duty in the United States within the eight-year maximum established by law as, for example, a three-year limit for the first tour of duty.

Section 504(b) states that members of the Service who are citizens of the United States will normally be assigned to duty within the United States at least once during each fifteen-year period in the Service. This provision carries forward the policy of section 572 of the 1946 Act, which provided that every Foreign Service officer was to be assigned to duty in the United States for at least three years in his or her first fifteen years of service. Section 504(b) broadens the scope of the provision to cover all members of the Service who are citizens of the United States, rather than just Foreign Service officers, and also allows discretion to make assignments consistent with the needs of the Service. Consequently, the committee expects that a reasonable number of Foreign Service positions will be maintained in the United States so as to permit the assignment of personnel in all categories to the United States after duty abroad.

Section 504(c) authorizes the Secretary to grant a paid sabbatical to a career member of the Senior Foreign Service for a maximum of eleven months to permit the member to engage in study or uncompensated work experience that will contribute to the member's development and effectiveness. Such sabbaticals may be granted under conditions specified by the Secretary in light of the conditions which apply to sabbaticals for members of the Senior Executive Service under 5 U.S.C. 3396(c). Those statutory conditions include: (1) a member may receive no more than one sabbatical in any 10-year period and may not take a sabbatical if eligible for voluntary retirement; and (2) a sabbatical agreement must specify that if the member fails without good and sufficient reason to carry out the agreement, the member shall be liable to the United States for payment of all expenses, including salary, of the sabbatical.

The committee feels that sabbaticals, together with training provided under chapter 7 of the bill comprise a necessary aspect of career development in the Foreign Service. The committee therefore expects that this authority to provide sabbaticals to the Senior Foreign Service will be used as necessary to enable individuals to acquire training in a wide variety of fields.

Section 505—Temporary details

Section 505 provides that a period of duty not more than six months in duration shall be considered a temporary detail rather than be considered an assignment within the meaning of chapter 5. Thus, a five week detail to Washington for consultation with the Department would not be considered a new assignment to duty in the United States. This provides for administrative efficiency and greater mobility.

CHAPTER 6—PROMOTION AND RETENTION

Chapter 6 carries forward from the 1946 Act the basic concepts of promotion and retention in the Foreign Service based upon demonstrated merit. The chapter also sets forth procedures whereby merit principles, as defined in the Civil Service Reform Act of 1978, are applied in a manner designed to provide for advancement and retention in the Foreign Service on the basis of performance.

Section 601—Promotions

Section 601(a) authorizes promotions for members of the Foreign Service. Career members of the Senior Foreign Service are promoted by Presidential appointment to a higher salary class, while noncareer and career candidate members of the Senior Foreign Service are promoted by secretarial appointment. Foreign Service officers and Foreign Service personnel may be promoted by Presidential appointment into the Senior Foreign Service or by assignment by the Secretary to a higher salary class under the Foreign Service Schedule.

Section 601(b) extends to all members of the Foreign Service the procedure of promotion on the basis of selection board recommendations and rankings. Presently, only Foreign Service officers are required to be promoted based on the recommendations and rankings of selection boards, although by administrative practice selection boards

are used for most other categories. This section makes members of the Senior Foreign Service and Foreign Service personnel subject to this process by law. An exception to the selection board process is authorized for categories of career and career candidate personnel under the Foreign Service Schedule who may be designated by regulation to receive promotions based on satisfactory performance. This exception will permit the initial promotions of officer candidates and certain specialists who enter the Service in "career ladders" after completion of a specified period of satisfactory performance without the necessity of awaiting the scheduling of a selection board to review these comparatively routine promotions. The only other exception to promotions based on selection board recommendations is that authorized by section 606(a), which (1) permits the Secretary, pursuant to the recommendation of the Foreign Service Grievance Board (established in Chapter 11 discussed below), an equal employment opportunity appeals examiner, or the Special Counsel of the Merit Systems Protection Board, and (2) requires the Secretary pursuant to a decision or order of the Merit Systems Protection Board, to promote a member of the Service.

Section 601(c) establishes procedures for promotion into the Senior Foreign Service. Only career members of the Service assigned to class FS-1 of the Foreign Service Schedule are eligible for promotion into the Senior Foreign Service. A candidate must request consideration for promotion into the Senior Foreign Service. Promotion decisions will be based upon recommendations and rankings by selection boards. The Secretary is authorized to prescribe the time period during which members may be considered for entry into the Senior Foreign Service. For example, a Foreign Service officer who requests promotion into the Senior Foreign Service might be considered by up to five consecutive annual selection boards and, if passed over, would then no longer be eligible for entry into the Senior Foreign Service. In order to avoid congestion in class 1 of the Foreign Service Schedule by less productive individuals no longer eligible for promotion, the Secretary may prescribe a separate time-in-class under section 607(a) of the bill during which such a passed-over member could remain in the Service. In addition, if the candidate withdraws his or her request to be considered for promotion into the Senior Foreign Service, no further requests may be entertained.

Section 601(c) (2) directs the Secretary, in making decisions on promotions into and retention within the Senior Foreign Service, to take into account the needs of the Service to plan for the continuing admission of new members and for effective career development and reliable opportunities for promotion. This subsection calls for the establishment of long-term promotion ranges in the relevant competition groupings, together with the range of combined voluntary and involuntary attrition necessary to achieve overall balance in the flow pattern.

This subsection reinforces a fundamental tenet of the 1946 Act that the Foreign Service must have sufficient attrition in the senior ranks to maintain its vitality. Subsequent provisions in this chapter provide the authority to assure that such attrition will occur, based on comparative evaluations of performance.

Section 601(c)(3) provides that the affidavits required upon appointment by 5 U.S.C. 3332 (affirming that no consideration has been paid for appointment) and by 5 U.S.C. 3333(a) (affirming loyalty to the United States and that the employee will not participate in strikes against the Government) need not be repeated when a promotion by appointment into or within the Senior Foreign Service occurs without a break in service. This provision parallels section 621 of the 1946 Act, which waived these requirements as to promotions of Foreign Service officers by appointment to a higher class. Under this bill, this provision remains relevant only to the Senior Foreign Service.

Section 602—Selection boards

Section 602 requires the Secretary, similar to section 632(a) of the 1946 Act, to establish selection boards to evaluate the performance of members of the Service. However, while the provision in the 1946 Act applied expressly to Foreign Service officers only, section 602 applies generally to members of the Senior Foreign Service and members who are paid under the Foreign Service Schedule. Since the Foreign Service is a career service, the committee feels that it is appropriate and fair to treat all members of that Service in a similar manner insofar as career development is concerned.

Selection boards will rank the members of a class on the basis of their relative performance and, as appropriate, will make recommendations concerning promotions, awards of performance pay to members of the Senior Foreign Service, denials of step increases under section 406(a), offers or renewals of limited extensions of career appointments under section 607(b) to members of the Service whose maximum time-in-class has expired, as well as such other actions as the Secretary may prescribe. The functions assigned to the selection boards by this section are not necessarily exclusive. The boards may be assigned additional functions, such as recommending the award of additional step increases to particular individuals. The functions assigned to a board are to be carried out in accordance with precepts prescribed by the Secretary. Except where reserved management rights are involved, precepts are negotiable.

Section 602(b) requires all selection boards to include public members, that is, individuals who are not Federal Government employees. The Secretary is directed to ensure that a substantial number of women and minority group members are appointed to each selection board.

Section 603—Basis for selection board review

Selection boards evaluate individual members of the Service on the basis of their performance and in light of the needs of the Service. Section 603 describes the manner in which selection boards will be informed about individuals (only through records in the official personnel file) and about Service needs (through precepts prescribed by the Secretary). On the basis of this information, the selection process is intended to identify the individuals who are best qualified to perform the functions required by the Service.

Section 603(a) states that recommendations and rankings by selection boards shall be based upon relevant personnel records kept by the Department which describe the character, ability, conduct, quality

of work, industry, experience, dependability, usefulness, and general performance of members of the Service. The description of personnel records is drawn from section 611 of the 1946 Act and is intended to describe service-related characteristics. Such records may include, but are not limited to, the reports of Foreign Service inspectors, performance evaluation reports of supervisors, and records of commendations, awards, reprimands, and other disciplinary action.

For the Senior Foreign Service, the consideration of records of current and prospective assignments is authorized. The committee does not question the utility of such records in estimating promotion needs. However, in order to ensure that such determinations will not be arbitrary or capricious, the career development pattern for each individual must be carefully constructed from the beginning of his or her career and extending throughout the career. While specialization in a certain functional or geographic area is desirable, individuals must be careful not to over-specialize to such an extent that estimates of prospective assignments in the Senior Foreign Service reveal that the individual has nowhere to go in his or her field and no secondary skills to draw upon. The establishment of an effective career development pattern depends equally on the individual member's constant efforts and on well-trained personnel counselors who are capable of charting alternative patterns which are sensible and workable in terms of present foreign policy objectives and of future possibilities and trends. The committee expects that these records will be developed and utilized as an integral part of career development and not as a way to deny promotions in a capricious manner. The committee also notes that the content of these records in a personnel file can be the subject of a grievance by an individual, which constitutes a protection against arbitrariness. In the committee's view, however, the best protection for the individual lies in his or her willingness to assume responsibility for the development of a career pattern which will avoid the problem, late in a career, of limited prospective assignments.

Section 603(b) complements subsection (a) and prescribes those matters which selection board precepts must address. Precepts shall emphasize performance which demonstrates those qualities necessary to the Service. More detailed guidelines, such as the need for responsiveness to challenges and acceptance of hardships, may be developed administratively as necessary. Accordingly, this subsection reflects the committee's general intent that, for the Senior Foreign Service, the precepts should emphasize the needs of the Service for policy formulation capabilities, executive leadership qualities, and highly developed functional or area expertise. In this regard, the section carries forward the policy of section 626 of the 1946 Act that specialization should not retard orderly advancement in the Service. The committee notes that these characteristics are to be reflected in the Senior Foreign Service as a group. It is not the committee's intent to require each individual member of the Senior Foreign Service necessarily to possess all characteristics equally.

Section 604—Confidentiality of records

Section 604 directs that the personnel records described in section 603 shall be kept confidential, except to the extent that they pertain

to the receipt, disbursement, and accounting of public funds. In addition to this general requirement of confidentiality, access to such records is limited to the President, the Secretary, those committees of Congress which oversee the Service and the representatives of such committees, and officers and employees of the Government authorized by law or assigned by the Secretary to work on such records. Individual members also have access to their own records upon written request. Section 604 is derived from section 612 of the 1946 Act, which operates to exempt Foreign Service personnel records from public disclosure.

Section 605—Implementation of selection board recommendations

Section 605 follows section 623 of the 1946 Act, which applied only to Foreign Service officers, and applies the provision of officers and personnel alike. Section 605 specifies that the recommendations for promotion made by selection boards shall be submitted to the Secretary in rank order by class or by specialization within a class. The Secretary will then make promotions or, in the case of Presidential appointment, submit recommendations to the President for promotions, in strict accordance with rankings of the selection boards. The Secretary may, however, prescribe regulations specifying special circumstances in which an individual's name may be removed from the rank order list or a promotion may be delayed.

Section 606—Other bases for increasing pay

Section 606 authorizes the Secretary to make (or recommend that the President make) a promotion, or grant an award for performance pay, or within-class salary increase pursuant to a recommendation of the Foreign Service Grievance Board, an equal employment opportunity hearing examiner, or the Special Counsel of the Merit Systems Protection Board. In addition, in the case of a decision or order of the Merit Systems Protection Board, the Secretary is required to take the action required by the decision or order. The purpose of this authority is to permit the smooth implementation of the decisions and recommendations of these authorized administrative authorities for redress of grievances or complaints. Section 606(a) generally follows section 632(b) of the 1946 Act. The references to the Merit Systems Protection Board and its Special Counsel are new.

Section 606(b) authorizes the Secretary, in implementing subsection (a) and under special circumstances set forth by regulation, to make retroactive promotions and pay awards, and to recommend retroactive promotions by the President. Section 606(b) also follows generally section 623(b) of the 1946 Act. It applies to actions under subsection (a) of this section as well as to promotions delayed pursuant to section 605(b).

Section 607—Retirement for expiration of time in class

Section 607(a) (1) provides that the Secretary shall prescribe regulations specifying the maximum period in which members of the Senior Foreign Service, Foreign Service officers, and other career members of the Service may remain in a salary class or in a combination of classes without promotion. The Secretary may establish and change such time-in-class limitations as the needs of the Service may require.

Section 607(a)(2) provides that the maximum time-in-class limitations may apply to a single salary class or to a combination of salary classes. For example, it might be provided that a Foreign Service officer could not remain in classes FS-2 and FS-1 for a combined total of more than fifteen years. Such combination time-in-class limitations have been prescribed administratively under the 1946 Act and are here expressly authorized. With respect to the Senior Foreign Service, the committee understands that time in class for the three classes will be four years for each of the lower classes, and three years for the top class. In no event may time-in-class limitations be less than three years for career members of the Senior Foreign Service. This should ensure that time in class is not used capriciously in the Senior Foreign Service.

Section 607(a)(3) provides for administrative change in time-in-class limitations, but requires that individuals already in a class for which time in class is decreased be permitted to remain in class for the period formerly set or at least for a period long enough to afford a reasonable opportunity for the required promotion.

Section 607(b), as amended by a committee amendment, continues the authority for retirement based on excessive time in class for Foreign Service officers which is currently provided in section 633 of the 1946 Act. It expands this authority to cover career personnel of the most senior rank (e.g., career minister) who were not subject to time-in-class limitations under the 1946 Act. It also authorizes coverage of other personnel to the extent that the Secretary determines advisable. The committee understands that the Department expects that time-in-class limitations will be shorter than the present limitations at the senior levels. The committee also expects that the current 22-year combination time in class will be abolished, since its one discernible effect has been to ensure that few members would be retired for excessive time in class, thereby resulting in congestion in the senior ranks.

Section 607(b) also provides that members of the Service whose maximum time in class expires after they have attained the highest class for their respective personnel categories may continue to serve under renewable limited extensions of their career appointments, in accordance with recommendations of selection boards. These extensions may not exceed five years, but may be renewed. Personnel serving under such limited career extensions would continue to be career members of the Service for purposes of performance pay, retirement based on relative performance, and participation in the Foreign Service Retirement and Disability System, among other things.

Section 607(b) is a new provision. It is designed for maximum flexibility and efficiency in the management and utilization of the senior personnel of the Service. It makes retention in the senior ranks dependent on performance. Only those who demonstrate a strong ability and desire to perform will be given limited career extensions or will have them renewed. A provision which would make renewal dependent on the Secretary's unilateral determination of the "needs of the Service" was deleted by a committee amendment. The precepts governing selection board actions should take those needs into account.

Section 607(c) provides that anyone who does not receive a promotion within an applicable time-in-class limitation prescribed pursuant

to section 607(a) or whose limited career extension under section 607(b) is terminated or not renewed shall be retired from the Service and shall receive retirement benefits in accordance with section 609. This subsection recognizes that such individuals will have contributed a significant portion of their careers to Government service and therefore deserve retirement benefits even if they are forced to retire earlier than anticipated. In practice, most individuals will likely meet the eligibility requirements for voluntary retirement in any case, but the committee believes that this attrition mechanism, to be just, must carry with it this provision ensuring eligibility for retirement benefits.

Section 608—Retirement based on relative performance

Section 608 continues the authority of section 633(a)(2) of the 1946 Act to retire a Foreign Service officer for failing to meet requisite standards of performance. Section 608 extends this authority to cover all career members of the Service who are United States citizens. However, section 2105(e) of the bill exempts temporarily a member currently in the Service to whom section 633(a)(2) of the 1946 Act does not now apply. This exemption extends for ten years or until the member becomes eligible for voluntary retirement and an immediate annuity, whichever occurs first. This exemption is necessary in fairness to those who began their careers in the Foreign Service under a different set of rules which did not subject them to evaluations by selection boards and subsequent selection out.

Section 608(a) provides that the Secretary will prescribe regulations concerning the standards of performance to be met by career members of the Service. Where selection board review indicates that the member has not met the standards of performance for his or her class, there will be an administrative review of the member's performance, which shall include an opportunity for the member to be heard. As in the case of retirement under section 607, all individuals in a given occupation and within the same class will be covered in an identical fashion. This section is intended to codify administrative procedures which have been developed and employed in the Foreign Service as required by the decision in *Lindsay v. Kissinger* (367 F. Supp. 949 (D.D.C. 1973)).

Section 608(b) provides that if the administrative review confirms that a member of the Service has failed to meet the standards of performance of his or her class, the member will be retired from the Service and will receive benefits under section 609.

The committee is relying on the integrity of the selection board process as an effective evaluation mechanism. Working properly, the selection board process should assure that a member's performance is judged against the standards of his or her class, on a relative rather than an absolute basis. The determination that a member has not met the standards of his or her class does not necessarily imply fault, inefficiency, or unsatisfactory performance. Instead, it means that most of the class has performed better than the member.

The system is based on evaluation reports and the board is not permitted to base its recommendations on anything but the contents of an individual's personnel file. This protects the individual from judgments based on hearsay or gossip. The system, however, is only effective if the reports are accurate. Therefore, the committee urges the Depart-

ment to continue to refine the evaluation report system so that reports reflect as accurately as possible a member's performance.

Section 609—Retirement benefits

Section 609(a) delineates the benefits available to a member of the Service who is retired pursuant to section 607 or 608. Under section 609(a) those members retired following limited career extensions under section 607(c)(2) or who are retired from the Senior Foreign Service or from class FS-1 of the Foreign Service Schedule will receive immediate annuity benefits computed in accordance with section 806, as will other members of the Service retired after becoming eligible for voluntary retirement under section 811. In providing immediate annuity benefits for these senior personnel, section 609 parallels section 634(a) of the 1946 Act, which afforded benefits to Foreign Service officers in classes 1, 2, or 3 separated from the Service under time-in-class limitations or for failing to meet requisite standards of performance.

Section 609(b) provides severance pay to any member of the Service retired under section 607(c)(1) or 608(b) who is not eligible for annuity benefits under section 609(a). The member is paid one month's salary for each year of service, up to one year's salary at the member's current rate. The retiree may also receive a refund of contributions to the Foreign Service Retirement and Disability Fund. A retiree with at least five years of service may elect, in lieu of receiving a refund of his or her contributions, a deferred annuity commencing at age sixty. Section 609(b) closely parallels section 634(b) of the 1946 Act.

Section 610—Separation for cause

Section 610(a)(1) continues the Secretary's authority, presently contained in section 637 of the 1946 Act, to separate any member of the Service for such cause as will promote the efficiency of the Service.

Section 610(a)(2) provides that members serving under career appointments in the Senior Foreign Service or under the Foreign Service Schedule are entitled to a hearing before the Foreign Service Grievance Board prior to separation at which the cause for separation must be established. Those serving under limited or temporary appointments, including career candidates, are also entitled to such a hearing if separation is based on misconduct. These hearing rights are the exclusive administrative procedure for challenging separation for cause.

Section 610(a) differs from the 1946 Act in two respects. It provides that the hearing rights constitute the exclusive administrative procedure, which avoids the potential of duplicate hearings for those members who may also have access to the Merit Systems Protection Board. Secondly, the provision specifies that the Foreign Service Grievance Board will conduct hearings under this section. That Board, which did not exist when the 1946 Act was enacted, is the best qualified body to adjudicate these cases. The Board of the Foreign Service has heretofore performed this function in an advisory capacity to the Secretary of State.

Section 610(b) provides that members of the Service who are separated for cause and who are participants in the Foreign Service Retirement

ment and Disability Fund will receive a refund of their contributions to that fund. A member with five years of retirement credit may choose instead a deferred annuity, unless separation has been for reason of disloyalty to the United States. Section 610(b) is virtually identical to section 637(b) of the 1946 Act. Benefits of those so separated who are participants in other retirement systems will be determined by the laws and regulations governing those systems.

Section 611—Termination of limited appointments

Section 611 provides that the Secretary may at any time terminate the limited appointment of any member of the Service who is paid a salary specified for the Senior Foreign Service or under the Foreign Service Schedule. Among those serving under limited appointments are career candidates (section 306(a)) and non-career appointees. Family members of Government personnel serving under local compensation plans (see, section 311) are also covered by this section. Section 611 effectively combines authorities contained in section 635 of the 1946 Act, permitting termination of probationary Foreign Service officers, and section 638, permitting termination of the limited appointments of Foreign Service Reserve officers and Foreign Service staff personnel. This section does not apply to expiration of a limited or temporary appointment at the end of its specified term.

Section 612—Termination of appointments of consular agents and foreign national employees

Section 612 authorizes the Secretary to terminate at any time services of any consular agent or foreign national employee, after giving due consideration to the criteria and procedures normally followed in the locality in similar circumstances. The principal purpose of this section is to ensure that provisions of Federal law applicable to domestic employment do not limit the authority to effect separations of foreign nationals employed abroad. Section 612 combines and broadens the authorities provided by three sections of the 1946 Act: section 671, providing authority to terminate consular agents for unsatisfactory performance, misconduct, or malfeasance; section 633, authorizing separation of alien clerks and employees for misconduct or malfeasance; and section 662, authorizing separation of alien clerks and employees for unsatisfactory performance.

CHAPTER 7—FOREIGN SERVICE INSTITUTE, CAREER DEVELOPMENT, TRAINING AND ORIENTATION

Chapter 7 continues the authority of the Secretary of State to maintain the Foreign Service Institute and to provide training and counseling for the Foreign Service. This chapter makes only minimal changes from existing law. Its primary purposes are to vest authority for the operation of the Institute in the Secretary of State, to consolidate existing authorities for training, career development, and counseling, to authorize by law the family liaison office, and to authorize training and counseling for family members of Foreign Service personnel in addition to that provided for members of the Service.

Section 701—Foreign Service Institute

Section 701(a) continues the present exclusive authority of the Secretary of State to operate and maintain the Foreign Service In-

stitute, originally established by section 701 of the 1946 Act, and restates the Secretary's authority to provide training and instruction to personnel of the Service, the foreign affairs agencies, and other agencies. The Institute will continue to be headed by a Director appointed by the Secretary of State.

Section 701(b) directs the Secretary of State to provide training, to the extent practicable, which meets the needs of all agencies. It also directs other agencies not to duplicate the facilities and training provided by the Secretary of State through the Foreign Service Institute. The section is patterned after section 701 of the 1946 Act. The Foreign Service Institute has been the center of governmental training in the foreign relations field and has grown as the needs have increased. Concentrating as many such activities as possible in this Institute remains the most efficient and effective way to handle governmental requirements in this area. The committee therefore expects that all agencies will keep the Secretary of State informed of their needs and of any changes which may be desirable to maintain the effectiveness of the Foreign Service Institute.

Section 702—Foreign language requirements

Section 702 provides that the Secretary shall establish Foreign language proficiency requirements for personnel of the Service who will be assigned abroad and shall arrange for appropriate language training at the Institute or elsewhere. This section follows in part section 578 of the 1946 Act. Its purpose is to carry out the finding stated in section 101(a)(4) of the bill that Foreign Service personnel should be knowledgeable of the languages spoken in the countries where they are assigned.

Section 703—Training authorities

Section 703 sets forth authorities which the Secretary may exercise in connection with the functions of the Institute. Section 703(a)(1) and (2) provides for the establishment of the curriculum of the Institute and for its correlation with the training and instruction given by other Government and private institutions. These provisions are derived from section 702 of the 1946 Act.

Section 703(a)(3) authorizes the Secretary of State to encourage programs complementary to those of the Institute and permits grants and other gratuitous assistance for this purpose to non-profit institutions. Section 703(a)(3) is derived from sections 702 and 703 of the 1946 Act and recognizes the desirability of using the facilities of non-profit institutions in cases where it would be costly or inefficient to set up similar programs at the Institute.

Section 703(a)(4), derived from section 704 of the 1946 Act, authorizes the employment of personnel for the Institute. When the conditions specified in paragraph (4)(B) are met, employment of certain personnel may be without regard to Civil Service laws governing appointments in the competitive service, and may include employment of non-citizens where suitably qualified U.S. citizens are not available.

Section 703(a)(5), derived from section 707 of the 1946 Act, authorizes the acquisition of real and personal property without public advertising to carry out the provisions of chapter 7.

Section 703(b)(1) is substantially identical to section 705 of the 1946 Act and authorizes the Secretary to pay the tuition and other expenses of members of the Service and employees. Section 703(b)(2) authorizes the Secretary to pay the salary, excluding premium pay and special differentials, of members of the Service assigned for training. Section 703(b)(3), derived from section 704(f) of the 1946 Act, authorizes the Secretary to provide special monetary or other incentives to encourage members of the Service to acquire or retain proficiency in foreign languages or special abilities needed in the Service. This section may be used to provide incentives, for example, for members of the Service to acquire the language competence required for service at a hardship post where it is difficult to attract and retain personnel.

Section 703(c) directs the Secretary to design training programs which will encourage career development for all categories of members of the Service. This provision is new, and provides statutory support for the current administrative practice of organizing career-oriented training courses and seminars. The committee expects that the Secretary of State will design training programs to foster the career development of Foreign Service personnel such as secretaries and communicators as well as Foreign Service officers. The committee is concerned that necessary language proficiency is not always characteristic of support personnel serving overseas. The goal of the Foreign Service Institute should be to provide necessary training and to upgrade the skills of personnel in the various categories of the Service so that each post has the best possible expertise available to serve United States foreign policy interests.

Section 703(d) provides that members of the families of personnel who are or will be assigned abroad may receive language and orientation training at the Institute, as well as functional training for anticipated employment at post pursuant to section 311.

Section 704—Training grants

Section 704 carries forward in slightly revised fashion the provisions of section 708 of the 1946 Act, as amended in 1978. It provides for grants to members of families of Government employees attending approved programs of study, which are defined in section 703(d)(1) and (2) as language and orientation training in anticipation of assignment abroad, or functional training for anticipated prospective employment as provided in section 311. Training and these accompanying grants are not authorized for general purpose education. These grants, which are limited to expenses actually incurred up to a ceiling to be established by regulation, may be paid in advance or by reimbursement.

Section 705—Career counseling

Section 705(a) carries forward the authority of section 639 of the 1946 Act and provides that the Secretary may provide career counseling, advice, and placement assistance to members and former members of the Service, other than those separated for cause. The reference to former members is intended merely to avoid the necessity of keeping a member on the rolls until counseling is completed. This will, for example, permit a member to retire from the Service, and still

finish a counseling program begun before retirement. This subsection is intended to facilitate the exit of individuals from the Service and is derived from section 405 of the Foreign Relations Authorization Act, Fiscal Year 1979, Public Law 95-426, 92 Stat. 963 (1978). The committee recognizes the difficulties resulting because members spend most of their careers abroad, out of direct contact with domestic American society. The committee believes that a formal career counseling program helps to ease the transition of Foreign Service personnel from the Service to another career. The possibility of selection-out at an early age also increases the need for such a program. The committee notes that other agencies of the Federal Government have expressed interest in this program, which has been quite successful during its first year of operation.

Section 705(b)(1) provides that the Secretary may facilitate the employment of Foreign Service spouses by providing career counseling, maintaining a central system for cataloguing their skills and employment opportunities available in the United States and abroad, and otherwise assisting them in obtaining employment. This section is derived from section 413 of the Foreign Relations Authorization Act, Fiscal Year 1978, Public Law 95-105, 91 Stat. 844 (1977).

Section 705(b)(2) directs the Secretary to establish a family liaison office to carry out these functions and others assigned by the Secretary. This provision legislates an already existing Family Liaison Office, set up in the Department of State pursuant to regulation. The Family Liaison Office currently provides a wide variety of services to Foreign Service members, spouses, and families. The committee applauds the efforts of that office, which has been in existence two years, and which has made steady progress toward solving some very difficult and complex problems.

CHAPTER 8—FOREIGN SERVICE RETIREMENT AND DISABILITY SYSTEM

Chapter 8 is substantially a restatement of the existing provisions of title VIII of the 1946 Act concerning the Foreign Service Retirement and Disability System. Voluntary retirement provisions presently in title VI of the 1946 Act have also been incorporated. With two exceptions, changes are generally confined to matters of style and terminology in the interest of clarity and conformity with the terminology used elsewhere in the bill. The text includes changes made by Executive order pursuant to the authority in section 805 of the 1946 Act to maintain existing conformity with the Civil Service Retirement and Disability System.

The substantive changes include the addition of section 814 providing for survivor benefits to former spouses of members of the Foreign Service who participate in the Foreign Service Retirement and Disability System. The provisions in the introduced bill relating to former spouses, including section 814, were substantially modified by a committee amendment. The second change is also in the form of a committee amendment to section 812 which increases the mandatory retirement age from 60 to 65.

Section 801—Administration of the system

Section 801 follows section 801 of the 1946 Act. It provides that the Foreign Service Retirement and Disability System will be admin-

istered by the Secretary of State, subject to regulations prescribed by the President.

Section 802—Maintenance of the fund

Section 802 follows section 802 of the 1946 Act. It provides that the Foreign Service Retirement and Disability Fund will be maintained by the Secretary of the Treasury.

Section 803—Participants

Section 803 (a) names as participants in the Foreign Service Retirement and Disability System those career and career candidate personnel who are in the Senior Foreign Service or assigned to a salary class under the Foreign Service Schedule, together with chiefs of mission who accumulate twenty years of service in the capacity. This provision will not alter the present categories of participants, except that it adds career candidates to assure that these personnel will be covered by the System's death and disability provisions during their initial years of probationary service until they achieve career status (*see*, section 803 of the 1946 Act, sections 9 and 15 of Public Law 90-494, 82 Stat. 810 (1968), and section 625 (k) (1) of the Foreign Assistance Act of 1961, 22 U.S.C. 2385 (k) (1). Career conditional appointees in the Civil Service are similarly covered by the Civil Service Retirement and Disability System.

Section 803 (b) provides that any otherwise eligible person who is appointed to a position by the President shall not, by virtue of accepting such appointment, cease to be eligible to participate in the System. This is consistent with provisions in chapter 3 and 5 preserving the salary and benefits of members of the Service who accept Presidential appointments.

Section 804—Definitions

Section 804 defines certain key terms for purposes of chapter 8 in accordance with section 804 of the 1946 Act. New definitions added in connection with the annuity rights of former spouses provided in section 814 include "court" (section 804 (4)), and "former spouse" (section 804 (6)). The definition of "lump-sum credit" is derived from section 841 (a) of the 1946 Act, and the definition of "price index" found in section 804 (9) of the 1946 Act is omitted as obsolete. The definitions are arranged in alphabetical order.

Section 805—Contributions to the Fund

Section 805 is substantially the same as section 811 of the 1946 Act. It provides that seven percent of a participant's salary shall be contributed from appropriations. It also provides that a new participant's contributions to another Government retirement fund will be transferred to the Fund. Provision is also made for special contributions to the Fund to cover periods of creditable service for which no contributions had previously been made, except that such contributions are not required for periods of military service or for periods for which credit is allowed to persons of Japanese ancestry interned during World War II.

Section 806—Computation of annuities

Section 806, like its predecessor in the 1946 Act, states the rules for computation of annuities to be paid to retired members of the Service or their beneficiaries.

Section 806(a) provides that the basic annuity shall equal two percent of the member's average basic salary for the three consecutive years of service when that salary was highest, multiplied by the number of years of service credit (up to a maximum of thirty-five years).

Section 806(b) is amended in its entirety by a committee amendment. Amended section 806(b)(1)(A) provides for a survivor annuity for the participant's spouse or former spouse unless the participant elects otherwise in writing at the time of retirement. As a result of the committee amendment, section 806(b)(1)(A) further provides that an election to provide less than a full survivor annuity shall not be considered valid unless participant establishes to the satisfaction of the Secretary of State (i) that the spouse has been notified of the loss of or reduction in survivor benefits, or (ii) that the participant has complied with such notification requirements as the Secretary of State shall, by regulation, provide.

Amended section 806(b)(1)(B) provides for reducing a participant's annuity in order to provide a survivor annuity for a former spouse as provided by the terms of any court order under section 820(b)(2).

Amended section 806(b)(2) provides the formula for reducing a participant's annuity when a survivor annuity is to be provided.

Amended section 806(b)(3) and (4) provides rules for computation of the survivor annuity, and for the date on which payment shall begin and end.

Section 806(c) provides for survivor annuities to the children of a deceased participant.

Section 806(d) provides for recomputation of a child's annuity upon the death of the surviving spouse or one of the children.

Section 806(e) provides rules for the beginning and termination of the annuity paid to a child of a deceased participant.

Section 806(f) provides that an unmarried participant may elect to provide a survivor annuity to a beneficiary designated by the participant. It also provides rules for computing the basic annuity and survivor annuity when such election is made.

Section 806(g) permits a participant who marries after retirement to elect a survivor annuity for his or her spouse and prescribes how the election is to be made.

Section 806(h), as amended by a committee amendment, requires that, as a condition of receiving a survivor annuity, a surviving spouse must elect to receive the survivor annuity instead of any other annuity to which he or she may be entitled under a Government employee retirement system. As indicated in Senate Report 93-999 of July 11, 1974, on S. 1791 which was the genesis of this subsection, neither the Social Security or military retirement system are a retirement system for Government employees.

Section 806(i) as amended by a committee amendment, provides that any married annuitant entitled to a supplemental annuity by reason of additional service through reappointment or recall after an initial period of retirement shall have that supplemental annuity reduced to provide a supplemental survivor annuity for his or her spouse unless the annuitant elects otherwise in writing.

Section 806(j) provides for recomputation of the basic annuity of a married annuitant who, subsequent to retirement, becomes single

through death or divorce. The subsection also allows such an annuitant to elect a survivor benefit in the case of remarriage. In the event of an award of a survivor annuity to a former spouse at the time of a divorce after retirement, no recomputation of a member's annuity would be involved unless the amount of the survivor benefit was being reduced.

Section 806(k) provides for annual notice to annuitants of their rights under subsections (g) and (j) and, to the extent practicable, for notice to spouses and former spouses of participants of their annuity rights under sections 806 and 814.

Section 806(l) provides that neither the basic annuity nor the survivor annuity to a spouse shall be less than the smallest primary insurance amount payable under Title II of the Social Security Act. It establishes a similar minimum from the survivor annuity paid to a deceased participant's child. However, this subsection will not apply to an annuitant or survivor entitled to receive any other periodic payments from the Federal Government that exceed the smallest primary insurance amount payable under Title II of the Social Security Act.

Section 807—Retirement of annuity

Section 807 states rules for the commencement of payment of an annuity, for submission of proof of eligibility for survivor benefits, for waiver of all or part of an annuity, and for recovery of over payments. It is substantially identical to section 822 of the 1946 Act.

Section 808—Retirement for disability or incapacity

Section 808 prescribes rules for disability retirement of participants in the System. Section 808 is substantially identical to section 831 of the 1946 Act, with the addition of a conforming change concerning a time limit on submission of claims for disability retirement. Annuities paid under this section to members of the Foreign Service prior to the Tax Reform Act of 1976 will continue to be excluded for Federal income tax purposes.

Section 808(a) provides for disability retirement of a participant with five or more years of service who has become totally disabled or incapacitated for useful and efficient service by reason of disease, illness, or injury. This subsection also provides that the annuity of a disability retiree with less than twenty years of service will be computed as if the retiree had served twenty years.

Section 808(b) provides for physical examinations to determine disability or its persistence. It also provides for reinstatement of recovered disability retirees.

Section 808(c) provides that a recovered disability retiree who is not reinstated may elect voluntary retirement (if eligible), lump-sum payment under section 815, or a deferred annuity beginning at age sixty.

Section 808(d) states that a participant may not receive both benefits under this section and benefits under 5 U.S.C. 8101-8151 other than scheduled compensation provided under 5 U.S.C. 8107.

Section 808(e) permits a disability retiree to receive lump-sum compensation under 5 U.S.C. 8135 so long as it does not cover the same period as the annuity benefits for the same disability. In such a case, provision is made for refund of a portion of the lump sum to the Department of Labor.

Section 808(f) authorizes approval of a disability annuity up to one year after the date of separation from the Service for a disability arising in the Service. Under present practice, if the participant retires or otherwise separates from the Service before the discovery or diagnosis of a disabling condition, a disability annuity may not be authorized. Section 808(f) is modeled after an identical provision (5 U.S.C. 8337(b)) authorizing approval of disability annuities under the Civil Service retirement system.

Section 809—Death in service

Section 809, as amended by a committee amendment, lists the benefits payable when a participant dies in service. Section 809(a) states the residual rule that if no annuity benefits are payable under the Act, then the lump-sum credit consisting of contributions to the Fund and interest thereon shall be paid. Amended section 809(b) provides survivor annuity benefits for the spouse or former spouse of a participant who dies in service with at least eighteen months of civilian service credit towards retirement under the System. Section 809(c) and (d) similarly provide annuity benefits to children of such a deceased participant. Section 809(e) provides computation rules for such annuities, stating that if the participant had less than twenty years of service, the annuities shall be calculated as if the participant had served twenty years.

Amended section 809(f) provides that if an annuitant who had elected a reduced annuity dies in service after being recalled under section 308, and that annuitant is survived by a spouse or former spouse who (by virtue of a court order) is entitled to a survivor annuity based on that election, the survivor annuity shall be computed as if the recall service had otherwise terminated on the day of death and the annuity of the deceased had been resumed in accordance with section 823. The section further provides that if death occurs after the annuitant had completed sufficient recall service to attain eligibility for a supplemental annuity, a surviving spouse may elect, in addition to any other benefits and in lieu of a refund of retirement contributions made during the recall service, a supplemental survivor annuity computed and paid under section 806(i) as if the recall service had otherwise been terminated. Further, if the annuitant had completed sufficient recall service to attain eligibility to have his or her annuity computed anew, the surviving spouse may elect, in lieu of any other survivor benefit under chapter 8, to have the rights of the annuitant determined anew and to receive a survivor annuity computed under subsection (b) on the basis of the total service of the annuitant. The last sentence of section 809(f), which is added by the committee amendment, provides that a surviving former spouse who was married to the participant during the period of recall service, is entitled to have the same election rights accorded a surviving spouse under this section if and to the extent a court order under section 820(b) (2) so provides.

Amended section 809(g) provides that the annuity of a surviving spouse under this section will be limited in accordance with section 806(b) (3) (B) if the deceased had a former spouse qualifying for an annuity under section 814. Section 809(h) states the rules for commencement of annuities payable under section 809.

Section 810—Discontinued service retirement

Section 810 provides that a participant who voluntarily separates from the Service with five or more years of service credit towards retirement under the System may choose between a lump-sum refund of contributions to the Fund and an annuity computed in accordance with section 806, commencing at age sixty.

Section 811—Voluntary retirement

Section 811 is similar to section 636 of the 1946 Act. It provides that any participant who is at least fifty years of age and has rendered twenty or more years of creditable service, including at least five years of civilian service credit toward retirement under the System, may retire with the consent of the Secretary and receive an annuity computed in accordance with section 806.

The provisions of this section and of section 810 add the requirement for a minimum of five years of service credit, excluding military and naval service, to ensure that individuals with long military service who are subsequently appointed to the Foreign Service obtain at least five years of civilian service credit, which could include unhealthful post credit under section 817, prior to becoming eligible for voluntary retirement. Those separating with less than five years of service credit would receive a refund of their retirement contributions as provided in section 815. This change is consistent with the existing five-year service requirement for disability retirement and for separation with title to a deferred annuity.

Section 812—Mandatory retirement

Section 812, as amended by a committee amendment, replaces sections 631 and 632 of the 1946 Act. Section 631 referred to career ambassadors, who will no longer constitute a separate salary class (*cf.* section 302(a)(2)(C)). Section 812(a) follows section 632 of the 1946 Act in providing a mandatory retirement age for participants in the System, subject to certain exceptions. These exceptions, stated in section 812(b), were also stated in both sections 631 and 632 of the 1946 Act. First, any participant who reaches the mandatory retirement age while occupying a position to which he or she was appointed by the President by and with the advice and consent of the Senate may continue to serve until that appointment is terminated. It should be noted that this exception applies only to appointments to positions (*e.g.*, chief of mission, Assistant Secretary) and not to appointments to the Senior Foreign Service or as Foreign Service officers. Second, the Secretary may retain on active service for a period of up to five years a participant who has reached the mandatory retirement age if the Secretary determines that it is in the public interest to do so. These exceptions are identical to those in current law.

A committee amendment raises the mandatory retirement age from 60 to 65. The committee wishes to note that in taking this action it is seeking a compromise between two conflicting principles. On the one hand, the committee opposes arbitrary mandatory retirement ages. They are inherently discriminatory. While the data provided by the administration demonstrates that availability for worldwide assignment decreases as age increases, there is no clear evidence to indicate that age 60 is a necessary breaking point.

On the other hand, administrative ease and the nature of the up-or-out system argue for predictable attrition rates. It is clearly easier and more humane to retire older members of the Service on the basis of age than on the basis of performance, health, or unavailability for worldwide assignment. Further, regular and predictable career flows are impossible without a regular rate of attrition.

By raising the mandatory retirement age to 65, the committee reduces the unfairness of the mandatory retirement age while providing a measure of administrative certainty.

Given these considerations, the committee expects the Department to offset the higher mandatory retirement age by effective enforcement of the requirement of availability for worldwide assignment and vigorous use of other authorities provided by the bill. Increasing the retirement age is not to be taken as a license to extend all careers for five years. It is expected that individuals between ages 60 and 65 will continue to be subject to selection-out for time in class and for substandard performance. Age is not to be used to discriminate either affirmatively or negatively within the Foreign Service.

Section 813—Retirement of former Presidential appointees

Section 813 provides that if a member of the Service is not reassigned within three months after completing an assignment in a position to which he or she was appointed by the President, the member shall be retired from the Service and receive annuity benefits in accordance with section 806. Section 813 is derived from section 519 of the 1946 Act. The scope of section 813 is somewhat broader in that, unlike section 519 of the 1946 Act, it extends to Presidential appointees under section 302(b) who are not necessarily chiefs of mission. The committee expects that, in the future, the attrition mechanism provided by this section will be used more consistently than it has been in the past.

Section 814—Former spouses

Section 814 is a new section which provides new rights for former spouses of members of the Foreign Service who participate in the Foreign Service Retirement and Disability System. A committee amendment substantially modified section 814, as introduced, and the explanation below is of the section as amended. The committee believes that this provision is justified in light of the difficulties of Foreign Service life which fall disproportionately on spouses of Foreign Service employees.

The nature of a Foreign Service career makes it particularly difficult for spouses of members of the Foreign Service to attain any independent economic security. Not only do frequent transfers among Foreign Service posts around the world militate against the establishment of an independent career for a spouse, but the opportunity for paid employment of any kind for a spouse in most foreign countries is minimal due to legal, language, and cultural barriers. Foreign Service spouses therefore have little opportunity either to establish income security in their own right or to develop marketable skills which can be put to use when the need arises.

Until 1972, the annual efficiency rating of Foreign Service officers included a rating of the performance of their wives, though not of

husbands, in such activities as entertaining, relationship with the community, and involvement in the service projects of the American wives. Despite the discontinuance of this practice, the Foreign Service tradition of husband-wife "teams" and of the participation of wives in the vital representational activities of the post is still very much alive. However, these full-time activities are not compensated in any way, so a spouse is left with no retirement credit and no marketable skills.

Amended section 814 provides for survivor annuities for former spouse, if and to the extent provided by court order. Amended section 814(a)(1) states that if a court order under section 820(b)(2) expressly so provides, a former spouse shall be entitled to a survivor annuity in an amount which shall be determined by or in accordance with the provisions of that court order. Other provisions of amended section 814 control the amount of a survivor annuity which a court may order.

Amended section 814(a)(2) provides that a former spouse shall not be qualified for a survivor annuity if before the commencement of that annuity the former spouse remarries before becoming 60 years of age. Amended section 814(a)(3) provides that an annuity payable to a surviving former spouse shall commence on the day the annuitant dies and shall terminate on the last day of the month before the former spouse's death or remarriage before attaining age 60. If the survivor annuity is terminated because of remarriage, it shall be restored at the same rate commencing on the date the remarriage is terminated if any lump-sum paid upon termination is returned to the Fund. Amended section 814(a)(2) and (3) is essentially the same as section 814(b)(2) and (3) in the introduced bill.

Amended section 814(a)(4)(A) provides that total survivor annuities with respect to a participant may not exceed 55 percent of that participant's annuity. This is identical to section 814(b)(4)(A) of the introduced bill. Amended section 814(a)(4)(B) limits, once a survivor annuity has been provided for a former spouse, survivor annuities for other beneficiaries of a participant to that portion, if any, of the maximum allowed under amended section 814(a)(4)(A), that is not committed to a former spouse. Amended section 814(a)(4)(C) provides that a court order may not adjust the annuity of a former spouse after the death of the participant. Amended section 814(a)(4)(B) and (C) are identical to section 814(b)(4)(B) and (C) in the introduced bill.

Amended section 814(a)(5)(A) and (B) provides for recomputation of a participant's annuity in the event a former spouse's annuity rights are terminated because of death or remarriage. These sections, together, are substantively the same as section 814(b)(5) in the introduced bill.

Amended section 814(b) is similar to section 814(c) in the introduced bill. Amended section 814(b)(1) permits a participant or former participant providing a survivor annuity benefit to a former spouse to elect an additional survivor annuity for any other former spouse or spouse, if the participant passes a physical examination prescribed by the Secretary of State. Amended section 814(b)(2) provides that neither the total amount of the survivor annuities elected under section 814(b) with respect to any participant or former participant, nor the survivor annuities for any one surviving spouse or former spouse under

section 814 and section 806(b)(3), may exceed 55 percent of the full amount of the participant's annuity. Amended section 814(b)(3) provides that the participant may fund annuities elected or provided for under this subsection either through a reduction in annuity or salary or by lump-sum or installment payments, or by a combination of reductions and payments. Amended section 814(b)(3)(B) provides that the participant shall be charged for additional survivor annuities elected under the subsection an amount actuarially equivalent to the survivor annuities. Amended section 814(b)(3)(C) provides that if a spouse or former spouse becomes ineligible for a survivor annuity provided under amended section 814(b)(1), then the participant's salary or annuity shall be recomputed if it had been reduced to provide for the annuity. Amounts accruing to the Fund shall be refunded to the extent they exceeded the actuarial costs of providing benefits for the period that they were provided. Amended section 814(b)(4) provides that survivor annuities provided under amended section 814(b) shall commence on the day after the participant dies and shall terminate on the last day of the month before the former spouse's death or remarriage before age sixty. Amended section 814(b)(5) provides that cost-of-living adjustments shall not be applicable to annuities under this subsection, unless authorized by regulations prescribed by the Secretary of State.

Amended section 814(d) provides that section 806(1) (which states that annuities paid under this chapter shall not be less than the primary insurance amount under Title II of the Social Security Act) shall not apply to annuities and survivor annuities of former spouses fixed by court order or to any additional survivor annuity provided under amended section 814(b).

Section 815—Lump-sum payments

Section 815, as amended by a committee amendment, provides for the return of a participant's contributions to the Fund if the participant is separated from the Service without becoming eligible for an annuity under the System including an annuity under section 808. Section 815 is identical in substance to section 841 of the 1946 Act, except that the definition of "lump-sum credit" contained in section 841(a) of the 1946 Act has been transferred to the definitions section (section 804(8)) and the remaining subsections accordingly redesignated.

Section 815(a) provides for the payment of a lump-sum credit to participants who separate from the Service without becoming eligible for an immediate or deferred annuity. Section 815(b) provides for a lump-sum credit for contributions made during a period of recall service that does not make the annuitant eligible for a supplemental or recomputed annuity. Section 815(c) provides that if annuity rights terminate before an annuity amount equal to the lump-sum credit has been paid, the difference will be paid in accordance with subsection (f). Section 815(d) provides that if a participant dies and leaves no survivor eligible for an annuity or the survivor's annuity rights terminate before a claim for an annuity is filed, then a lump-sum credit shall be paid in accordance with subsection (f). Section 815(e) prescribes payment in accordance with subsection (f) of any accrued but unpaid

annuity owing with respect to a deceased participant. Section 815(f) prescribes the order of precedence for payments of lump-sum credits under subsections (c) through (e) to survivors of the participant. Section 815(g) prescribes the order of precedence for payment of any annuity accrued and unpaid on the death of a survivor annuitant. Section 815(h) provides for payment of a lump-sum credit based on contributions to the Fund made by a participant after completing thirty-five years of service, unless such contributions are applied toward any special contribution owing under section 805(d).

Section 816—Creditable service

Section 816, as amended by a committee amendment, sets forth rules specifying periods that are creditable toward retirement under the System. Section 816 follows section 851 of the 1946 Act as amended by Executive order, except for the addition of subsection (h) which is explained below.

Section 816(a) authorizes credit for periods of civilian, military, and naval service. Section 816(b) authorizes credit for unused sick leave. Section 816(c) provides for contributions by a participant while serving as an officer or employee of an organization composed primarily of Government employees on approved leave of absence without pay and authorizes credit for such periods of service. Section 816(d) allows a participant who has received a refund of contributions covering otherwise creditable service to make a special contribution under section 805 in order to have such period of service credited under the System. Section 816(e) provides that no credit toward annuity computation shall be made for any period of civilian service under another retirement system unless the participant waives the right to any annuity under such other system and makes a special contribution to the Fund pursuant to section 805 covering such service. Section 816(f) provides that a participant who leaves the Service to enter the military service during a period of war or national emergency is not deemed to have been separated from the Service for retirement purposes for a period of five years unless the participant requests and receives a lump-sum payment pursuant to section 815.

Section 816(g) provides that the annuity or survivor annuity of a participant of Japanese ancestry who was interned in the United States during World War II may be recomputed to allow credit for such period of internment upon application to the Secretary of State. Other provisions of the new subsection provide that the Secretary of State will take steps to identify and assist individuals who may be entitled to credit under this subsection, and that other agencies having information on such participants will furnish it on request to the Secretary. This provision was previously extended to the Foreign Service by Executive order.

New section 816(h) provides that a participant who serves as a full-time paid employee of a Member or office of the Congress while on approved leave without pay shall continue to make contributions to the Fund based on the salary he would be receiving if on active duty in the Service. The subsection also provides that the employing office of the Congress will make a matching contribution to the Fund and that such periods of service will be creditable to retirement under the System. The purpose of this new subsection is to set forth clear rules governing the retirement obligations and benefits applicable

during such employment. It will prevent a participant from obtaining a windfall benefit by remaining a member of the Service and continuing in Federal employment and so receiving service credit without a corresponding obligation to contribute to the Fund.

A committee amendment strikes out new section 816(i) which set forth rules for determining which periods of service would be considered creditable service for purposes of determining benefits accorded to former spouses.

Section 817—Extra credit for service at unhealthful posts

Section 817 authorizes credit towards retirement at the rate of one year and a half for each year of actual service at posts designated as unhealthful by the Secretary of State. This credit is in lieu of a differential under 5 U.S.C. 5925 or 5928.

Section 818—Estimate of appropriations needed

Section 818 requires the Secretary of the Treasury to prepare annual estimates of the appropriations required to be made to the Fund and to make actuarial valuations of the System at least every five years. Section 818 also authorizes the Secretary of State to expend up to \$5,000 per year from the Fund for necessary incidental administrative expenses of the System.

Section 819—Investment of the fund

Section 819 authorizes the Secretary of Treasury to invest in interest-bearing securities of the United States portions of the Fund not necessary for immediate operations.

Section 820—Assignment and attachment of moneys

Section 820, as amended by a committee amendment, provides for exceptions to the rule stated in section 864 of the 1946 Act that moneys receivable under the System are not assignable (except for severance pay) and are not subject to execution, levy, attachment, or other legal process. Section 820(a) (1) permits an individual entitled to an annuity from the Fund to make allotments or assignments of amounts from such annuity for such purposes as the Secretary considers appropriate. Section 820(a) (2) authorizes the assignment of severance pay benefits received in accordance with section 609(b) (1). This subsection is identical in substance to section 634(c) of the 1946 Act.

A committee amendment strikes out section 820(b) (1) and (2), inserts in lieu thereof new section 820(b) (1), (2), and (3), and redesignates subsequent paragraphs accordingly. New section 820(b) (1) provides that payments under chapter 8 which would otherwise be made to a participant or annuitant based upon his or her service shall be paid (in whole or in part) by the Secretary to another person to the extent expressly provided for by the terms of any decree of divorce, annulment, or legal separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of legal separation. This provision is identical to a provision enacted during the 95th Congress which was applicable to Civil Service annuities. This provision was subsequently extended to the Foreign Service by Executive order.

New section 820(b) (2) is a new provision and provides that any former spouse of a participant or former participant shall be entitled

to a survivor annuity under section 814(a) if and to the extent expressly so provided for in the terms of a court decree of divorce or annulment, or the terms of any court order incident to such decree. This provision, in effect, permits a court to require a member to provide a survivor annuity for a former spouse. The provision has no precedent in the Civil Service retirement law.

New section 820(b)(3) provides that the provisions of section 820(b) relating to court orders shall not apply in the case of any court decree or order which is inconsistent with the requirements of Chapter 8, as determined by the Secretary of State. Thus, a court may not order a benefit for a former spouse that a member may not elect for a spouse. Section 820(b)(4), as redesignated by a committee amendment, provides that payments pursuant to a court order will be made only after written notice and other required information and documentation have been furnished to the Secretary. Section 820(b)(5), as redesignated by a committee amendment, provides that the Fund may in no case be required to make a second payment of the same annuity obligation to a second individual. A committee amendment strikes out section 820(b)(5) of the introduced bill.

Section 820(c) restates the former rule, as modified by new subsections (a) and (b), that moneys payable under Chapter 8 are not subject to legal process except as otherwise provided by Federal law. This section does not affect 42 U.S.C. 659, which makes compensation of Federal employees subject to legal process to enforce legal obligations for child support and alimony.

Section 821—Payments for future benefits

Section 821 provides that any statute authorizing new or liberalized benefits, extensions of benefits, or salary increases that increase the liability of the Fund is deemed also to authorize appropriations to finance the unfunded liability created by that statute in thirty equal annual installments. Section 821 also authorizes an appropriation for each fiscal year of the Foreign Service normal cost (*cf.* section 804(5)) for that year which is not met by contributions to the Fund under section 805(a).

Section 822—Unfunded liability obligations

Section 822(a) provides that the Secretary of State shall notify the Secretary of the Treasury at the end of each fiscal year of the amount equivalent to the interest on the unfunded liability computed for that year and that portion of disbursement for annuities attributable to credit allowed for military service. Section 822(b) provides that the Secretary of the Treasury shall credit such amounts as are reported under section 822(a) to the Fund out of any money in the Treasury not otherwise appropriated. Section 822(c) provides that requests to Congress for appropriations to the Fund under section 821(b) shall include reports on the sums credited to the Fund under section 822(b). Obsolete transitional provisions contained in the corresponding section of the 1946 Act have been deleted.

Section 823—Annuity for recall service

Section 823 is identical in substance to section 871 of the 1946 Act. Section 823(a) provides that an annuitant recalled to active duty in the Service will receive his or her salary in lieu of an annuity and

will make contributions to the Fund while on recall service, but that the annuity shall resume on the day following the termination of recall service. Section 823(b) provides for refund of the annuitant's contributions to the Fund during recall service which lasts a year or less, for a supplemental annuity if the recall service lasts more than a year, and for a recomputation of the basic annuity if the recall lasts more than five years.

Section 824—Reemployment

Section 824(a) establishes a ceiling on the amount a retired member of the Service may receive upon reemployment by the Federal Government from his or her salary and annuity combined. While such member may receive his or her salary regardless of amount, he or she will be paid only so much of his or her annuity as, when combined with the salary, will not exceed the basic salary during any calendar year which the member was entitled to receive at the time of retirement.

Section 824(b) provides that an agency or other entity of the Federal Government that employs a retired member of the Service shall notify the Secretary of State of such reemployment and shall pay the member's salary directly to such member.

Section 824(c) provides for recovery (*cf.* section 807) of overpayments of annuities made in excess of the amounts to which a retired member is entitled under section 824(a) by withholding from his or her salary or from other moneys, including annuity payments, payable under Chapter 8.

Section 825—Voluntary contributions

Section 825, which is identical in substance to section 881 of the 1946 Act, provides for the disposition of voluntary contributions to the Fund made under prior laws authorizing such contributions. On the date on which the participant becomes eligible for an annuity or a deferred annuity, he or she may choose to have such voluntary contributions refunded in a lump sum or used to purchase an additional annuity or annuities.

Section 826—Cost-of-living adjustments of annuities

Section 826 provides for cost-of-living adjustments to annuities under the System which shall correspond to similar adjustments of annuities under the Civil Service retirement system.

Section 827—Compatibility between Civil Service and Foreign Service retirement systems

Section 827 provides that, whenever a law of general applicability affects participants, annuitants, or survivors under the Civil Service Retirement and Disability System and alters previously existing conformity between that system and the Foreign Service Retirement and Disability System, then such law shall be extended to the Foreign Service Retirement and Disability System. The President is authorized to prescribe regulations by Executive order to implement this section. Section 827 is identical in substance to section 805 of the 1946 Act.

CHAPTER 9—TRAVEL, LEAVE, AND OTHER BENEFITS

Chapter 9 carries forward the Secretary's authority to pay travel and related expenses, and to provide for home leave, health care, and

representation allowances for Foreign Service personnel and their families.

Section 901—Travel and related expenses

Section 901 brings together various provisions relating to payment of travel and related expenses for members of the Foreign Service and their families. The authorities contained in this section will continue to be implemented by regulations, primarily the Foreign Service Travel Regulations. Section 901 largely derives from section 911 of the 1946 Act, although provisions of section 942 relating to travel for medical purposes have also been included.

Section 901(1), derived from section 911(1) and (2) of the 1946 Act, authorizes payment of expenses of proceeding to and returning from assigned posts of duty. This includes assignment to posts in the United States, such as the United Nations.

Section 901(2), also derived from section 911(1) and (2) of the 1946 Act, authorizes payment of expenses incurred while traveling on authorized or required home leave. Home leave is authorized by section 6305 of title 5, United States Code.

Section 901(3) authorizes payment of expenses incurred when a family member accompanies a member of the Service on temporary duty. This provision is substantially the same as section 911(10) of the 1946 Act. Under present law, this type of travel for family members is limited to occasions when the temporary duty is ordered in connection with travel to or from a new post of assignment or in connection with home leave. This bill would broaden this authority to permit its use with other temporary duty. This authority is being broadened to permit family members to accompany employees detailed to international conferences or given other temporary assignments expected to last unusually long periods of time. It is unreasonable, except in emergency situations, to order employees to distant posts for extraordinarily long periods without the opportunity for their families to accompany them. It would be cheaper to authorize family members to accompany an employee on extended temporary duty than it would be to assign the employee to the location and ship effects. The committee expects the Secretary by regulation to limit application of this new authority to situations where the temporary duty is expected to continue for extraordinarily long periods of time.

Section 901(4) authorizes payment for representative travel of a member of the Service and his or her family, subject to the limitation that no more than one family member may accompany the Foreign Service member on representational travel outside the country of the member's assignment. Both the authority and the limitations are substantially the same as under section 911(1) and (2) of the 1946 Act.

Section 901(5), which is derived from section 942 of the 1946 Act, authorizes payment for travel to obtain necessary medical care while abroad in a locality where there is no suitable person or facility to provide such care. The scope of the provision has been clarified by the inclusion of the term "medical condition" to indicate that medical travel may be authorized for prenatal care or other necessary medical expenses of a family member incapable of caring for himself or herself at post. This authority is particularly important with respect to infants whose parents are medically evacuated.

Section 901(6) authorizes payment for travel for rest and recuperation from posts designated by the Secretary which present significant hardships for the members of the Service and his or her family. This includes conditions such as danger, isolation, unfavorable climatic conditions, or totally inadequate recreational services. Such travel is limited to one trip per two-year tour or two trips per three-year tour, but the Secretary may allow an additional trip or trips in extraordinary circumstances. Section 901(6) is derived from section 911(9) of the 1946 Act. The authority for the Secretary to permit additional trips in extraordinary cases is added because there are a few posts at which members of the Service encounter such isolation and difficult conditions that more frequent trips for rest and recuperation are essential to the well-being of individuals and the efficiency of operations.

Section 901(7) authorizes payment of travel expenses and transportation costs incident to the removal of family members and shipment of personal effects, including automobiles, from a post where there is danger arising from unsettled conditions such as war, civil strife, or natural disasters. This section also authorizes payment for the return of family members and property when the disturbed conditions have ceased. Section 901(7) is substantially the same as section 911(7) of the 1946 Act.

Section 901(8) authorizes payment of travel expenses for two trips a year by members of the Service to visit family members unable to live with the member at post because of continuing disturbed conditions there. Additional trips to family members located abroad may be authorized so long as the total cost of such trips does not exceed the cost of two trips to the District of Columbia. Section 901(8) is derived from section 911(11) of the 1946 Act. A provision that facilities of the Military Airlift Command be used where possible has been deleted as unnecessary. Section 901(8) covers those situations where families stay in the United States, but it also covers the case of a family which chooses to live close to the post where the Foreign Service member is stationed when they are not permitted to live at that post.

Section 901(9) authorizes payment for emergency family visitation. It is derived from section 911(11) of the 1946 Act and is intended to mitigate the personal hardship which is increased when great distances separate families, as is the case when members are assigned abroad and a personal emergency arises in the United States.

Section 901(10) authorizes payment for the costs of preparing and transporting to their home the remains of members of the Service or their families who die abroad or while in travel status. This subsection is identical in substance to section 911(8) of the 1946 Act.

Section 901(11) authorizes payment for the transportation of the furniture and household effects of members of the Service to their duty posts and to their place of residence upon termination of duty abroad. This subsection is identical to section 911(3) of the 1946 Act.

Section 901(12) authorizes payment for packing and storing the furniture and effects of a member of the Service. Section 901(12) is derived from section (911) (4) and (5) of the 1946 Act, although it deletes as unnecessary a provision stating that the maximum weight

of goods stored shall not exceed the maximum weight that could be shipped under applicable regulations. The limitation will be implemented in accordance with the applicable maximum combined storage and shipment allowance stated in the Foreign Service Travel Regulations.

Section 901(13) provides for the transportation of a privately-owned motor vehicle for a member of the Service once every four years the member is serving continuously abroad. A replacement vehicle may be transported for a member of the Service if the Secretary determines such replacement to be necessary for reasons beyond the control of the member and in the best interest of the Government or if, in connection with a transfer, the cost of transporting the replacement vehicle is less than or equal to the cost of shipping the member's present vehicle from the former post of duty to the new post. Section 901(13) is derived from section 913 of the 1946 Act. The provision for replacement of a vehicle incident to transfer is new and should avoid the unnecessary expenses of transporting older vehicles which are about to be replaced, often because they cannot meet the inspection requirements of the country in which the member is serving.

Section 901(14) authorizes payment of the travel and relocation expenses of members of the Service and their families in connection with assignment in the United States, including assignments to State and local governments. This section provides authority similar to that contained in section 576(f) of the 1946 Act with respect to assignments to State and local governments under the so-called Pearson program. It also permits reimbursement or relocations expenses incurred by members of the Service on other assignments to or within the United States for which they are not now authorized to be reimbursed and for which other employees of the Government are reimbursed under 5 U.S.C. 5724(a). Section 901(14) also authorizes members of the Service assigned to State and local governments under the Intergovernmental Personnel Act (5 U.S.C. 3371-76) to be reimbursed for travel expenses on the same basis and under the same rules as are now authorized in connection with all other types of Foreign Service assignments.

Section 901(15) authorizes payment for the international portion of travel between a Foreign Service post and the United States for children of members of the Foreign Service to visit their parents when there is a family separation. More and more frequently in the Foreign Service, divorce, unsettled conditions at posts abroad, or the demands of a spouse's career lead to separations of members of the Service from their children. Members of the Service who wish to maintain contact with their children while stationed abroad frequently find the travel costs to be prohibitive. This subsection is designed to permit Foreign Service families to lead as nearly normal lives as possible, given the requirement of overseas service, so as to help retain able personnel who find themselves in such divided family situations.

Section 902—Loan of household effects

Section 902 authorizes the loan of household furnishing and equipment to members of the Service for use in personally-owned or leased residences as a means of reducing transportation costs. Section 902 is substantially the same as section 912 of the 1946 Act.

Section 903—Required leave in the United States

Section 903 authorizes the Secretary to order a member of the Service to take a statutory leave of absence in the United States after eighteen months of service abroad and requires the Secretary to do so as soon as possible after the member has completed three years of service abroad. Section 903 also provides that members of the Service in the United States on statutory leave of absence may be given work in the Department, but that such periods of work will not be counted as leave. Section 903 is identical in substance to section 933 of the 1946 Act.

Section 904—Health care

Section 904 combines and revises several sections of the 1946 Act relating to the provision of health care for members of the Service.

Section 904(a) authorizes the Secretary of State to establish a health care program to promote and maintain the physical and mental health of members of the Service and their families, and of other personnel of the Department or other agencies and members of their families who are abroad and are designated as eligible through regulation or interagency agreement.

Section 904(b), which is derived from section 943 of the 1946 Act, provides that such a program may include, for example, medical examinations for applicants for employment and for Department personnel and members of the Service and their families and may include inoculations and vaccinations for such personnel and family members. Other health care not specified, such as non-cosmetic dental care, could also be provided at posts where warranted.

Section 904(c) authorizes the Secretary of State to establish health care facilities at posts abroad to the extent such facilities are warranted. Section 904 is identical in substance to section 945 of the 1946 Act.

Section 904(d), derived from section 941 of the 1946 Act, authorizes the Secretary to pay the costs of hospitalization or similar treatment for individuals eligible for health care under this section, provided the illness, injury, or medical condition being treated was incurred, caused, or materially aggravated during periods abroad. This subsection eliminates a specific \$35 deductible provision and a 120-day maximum coverage for payment for hospitalization or similar treatment of a family member of a member of the Service in certain circumstances. It also eliminates the provision that treatment for an illness or injury is not compensable if the condition resulted from vicious habits, intemperance, or misconduct. These provisions are outdated and it is intended that limits on payment under this section will be established by regulation which will permit adjustment to take account of the factors addressed specifically in the 1946 Act.

Section 904(e) authorizes the Secretary of State to provide health care under this section beyond the date of separation of eligible personnel and to provide health care to family members beyond the date of death of such personnel or of dissolution of a marriage. Section 904(e) is derived from section 944 of the 1946 Act. The provision allowing benefits to continue after dissolution of marriage is new. It merely avoids immediate termination of a family member's medical

treatment for a condition sustained abroad if the employee later obtains a divorce. It is not intended to provide continuing health care for a spouse following a divorce when the condition is not related to service abroad.

Section 904(f) authorizes the Secretary of State to contract for health care where he or she deems it advisable. The subsection is derived from section 941 of the 1946 Act and recognizes that there are certain areas where good health care is available in country and where it is consequently not necessary to assign U.S. medical personnel.

Section 905—Representation expenses

Section 905 is derived from section 901 of the 1946 Act. It authorizes the Secretary to provide for official receptions and entertainment and other representational expenses of members of the Service and family members in order to enable the Department and the Foreign Service to provide proper and effective representation of the United States and its interests. The prohibition in 5 U.S.C. 5536 against extra pay for personnel continues to be expressly inapplicable to representation allowances under this section.

CHAPTER 10—LABOR-MANAGEMENT RELATIONS

Although labor-management relations in the Civil Service were governed by Executive order beginning in 1962, labor-management relations in the Foreign Service have been governed by separate Executive order only since 1972. In 1978, as part of the Civil Service Reform Act of 1978, Congress established a statutory basis for labor-management relations in the Civil Service, but the Foreign Service was excluded from coverage of those labor-management relations provisions. Chapter 10 of the bill will now extend such a statutory basis to the Foreign Service.

Although Chapter 10 establishes a statutory framework for the Foreign Service which is separate from that which governs the rest of the Civil Service, the labor-management relations program resulting from the statutory provisions will be a part of the comprehensive program established as a result of the CSRA. The vast majority of provisions in chapter 10 are identical to corresponding provisions in the CSRA and are intended to be applied and interpreted in the same manner as the CSRA provisions. In addition, administration of the labor relations program is lodged within the Federal Labor Relations Authority (FLRA), the agency charged with administering the CSRA program. Under chapter 10 the General Counsel of the FLRA is responsible for bringing unfair labor practice cases, and the three member Foreign Service Labor Relations Board which oversees the labor relations program is established as a part of the FLRA. However, although the Foreign Service program will not be a separate program, a separate statutory framework is justified on two counts. First, there are some significant differences between the Foreign Service personnel system and other Federal personnel systems. These differences, which are discussed elsewhere in this report, require special statutory treatment. Although numerous exceptions for the Foreign Service could be created in the existing statutory provisions, a clearer approach

appears to be to establish a separate comprehensive framework for the Foreign Service. Second, it will be helpful to those responsible for administering the Foreign Service personnel system to have all major provisions governing that system gathered together in one basic act, i.e., the Foreign Service Act of 1980.

Provisions of chapter 10 which do not differ substantively from corresponding provisions in the CSRA are not discussed in detail below. The legislative history of the CSRA should be reviewed in connection with questions of intent or interpretation of these provisions. It should be noted that for convenience, references below to sections 1001-1018 refer to those sections of the bill while references to sections 7101-7135 refer to sections in chapter 71 of title 5, United States Code (the modified labor-management relations provisions of the CSRA).

Section 1001—Labor-management policy

Section 1001 restates without substantive change the provisions of section 7101 relating to the labor-management policy of the Congress. Paragraph (3) of section 1001 recognizes that the unique conditions of Foreign Service employment require a distinct framework for the development and implementation of modern, constructive, and cooperative relationships between management officials and organizations representing members of the Service. Chapter 10 of the bill provides that distinct framework.

Section 1002—Definitions

Section 1002 defines various terms used throughout chapter 10. The definitions, which correspond to definitions set forth in section 7102, effectively set the coverage and the exclusions from coverage for individuals, agencies, and labor organizations.

Paragraph (1) defines "Authority" to mean the Federal Labor Relations Authority described in section 7104(a).

Paragraph (2) defines "Board" to mean the Foreign Service Labor Relations Board, established by section 1006(a).

Paragraph (3) restates without substantive change the definition of "collective bargaining" in section 7103(12).

Paragraph (4) defines "collective bargaining agreement" to mean an agreement entered into as a result of collective bargaining. The definition corresponds to the definition in section 7103(8) except that the requirement that the agreement be "signed" is omitted in recognition of the practice of so-called "rolling negotiations" which has been followed in the Foreign Service. While comprehensive long-term collective bargaining agreements may be entered into pursuant to chapter 10, this has not been the case in the past, although a trend toward such agreements is developing and should be encouraged.

Paragraph (5) defines the term "conditions of employment". Except for subparagraph (D), paragraph (5) restates without substantive change the definition set forth in section 7103(14). Wording differences contained in the original administration bill (H.R. 4674) were rejected to ensure that the term would be interpreted in the same manner for the Foreign Service and the rest of the Civil Service. The reference to "classification of any position" has been expanded to include "designation" of positions. This is a function unique to the Foreign Service which is closely akin to position classification, and accordingly is an

appropriate matter for exclusion from the definition. Subparagraph (D) also excludes from the definition matters relating to Government wide or multi-agency responsibility of the heads of agencies affecting the rights, benefits, or obligations of individuals employed in agencies other than those which are authorized to utilize the Foreign Service personnel system. This corresponds to the provision in section 7117(a) (1) which states that the duty to bargain in good faith applies only to the extent not inconsistent with any Government-wide rule or regulation. Under the CSRA, certain labor organizations are accorded consultation rights with respect to Government-wide regulations (*see*, section 7117(d)). The committee expects the Foreign agencies to accord similar rights to labor organizations with respect to Government-wide or multi-agency responsibilities excluded from the definition of "conditions of employment".

Paragraph (6) restates without substantive change the definition of "confidential employee" in section 7103(13).

Paragraph (7) restates without substantive change the definition of "dues" in section 7103(5).

Paragraph (8) defines the term "employee". This definition corresponds to the definition in section 7103(2). Besides stylistic differences there is one substantive difference between the corresponding definitions. Under the bill "supervisors" are not excluded from the definition of "employee" as they are under the CSRA provision. The effect of this difference is to allow Foreign Service supervisors to be members of bargaining units along with what are normally considered rank-in-file employees. This is a distinct departure from the practice in both the private sector and the Federal sector generally, but continues the existing practice in the Foreign Service where the committee understands about fifty percent of the current bargaining unit membership would technically qualify as "supervisors". The committee is reluctant to acquiesce in deviations from established labor-management relations practices which have proven to be sound in both the private and the Federal sector, and does so here only because the current situation in the Foreign Service appears to be acceptable to both the agencies concerned and the representatives of members of the Service. The committee does not intend its action with respect to the Foreign Service to be viewed in any way as a precedent for the labor relations program under the CSRA. Finally, it should be noted that the exclusion of "confidential employees" from the definition of "employee" does not reflect a substantive departure from the CSRA since under the CSRA these employees are excluded from bargaining units under section 7112(b) (2).

Paragraph (9) restates without substantive change the definition of "exclusive representative" in section 7103(16). A "grandfather clause" contained in section 7103(16)(B) is omitted as unnecessary.

Paragraph (10) defines "General Counsel" to mean the General Counsel of the FLRA.

Paragraph (11) restates without substantive change the definition of "labor organization" in section 7103(4).

Paragraph (12) defines "management official" to mean an individual who: (A) is a chief of mission or principal officer; (B) is serving in a position to which appointed by the President, by and with the

advice and consent of the Senate, or by the President alone; (C) occupies a position which in the sole judgment of the Secretary is of comparable importance to the offices mentioned in subparagraph (A) or (B); (D) is serving as a deputy to any individual described by subparagraph (A), (B), or (C); (E) is assigned to carry out functions of the Inspector General of the Department of State and the Foreign Service under section 209; or (F) is engaged in the administration of this chapter or in the formulation of the personnel policies and programs of the Department. This definition differs from the corresponding definition in the CSRA (*see*, section 7103(11)). The definition is important because it establishes the primary dividing line between the bargaining unit and management, since as explained above "supervisors" may be members of the bargaining unit. The Department of State has indicated that the definition in the bill accurately reflects the current situation with respect to the delineation between management and the bargaining unit. The committee understands that the current delineation has proved workable and constructive, and the parties involved have no desire for any change in this area. Again the committee stresses that it does not intend its action with respect to the Foreign Service to be viewed in any way as a precedent for the labor-management relations program under the CSRA.

Paragraph (13) defines "Panel" to mean the Foreign Service Impasse Disputes Panel, established by section 1010(a).

Paragraph (14) restates without substantive change the definition of "person" in section 7103(1).

Section 1003—Application

Section 1003(a) provides that chapter 10 shall apply only with respect to the Department of State, the International Communication Agency, the United States International Development Cooperation Agency, the Department of Agriculture, and the Department of Commerce. It should be noted that by virtue of the definition of the term "Department" in section 102(4) of the bill, when the term is used in chapter 10 with reference to the exercise of functions (as defined in section 102(6) of the bill), the term include the agencies described in the preceding sentence. Similarly, when used in this analysis the term should be deemed to include those agencies.

Section 1003(b) grants the President the authority to make limited exclusions from the provisions of chapter 10. Paragraph (1) restates without substantive change the provisions of section 7103(b)(1) which permit the President to exclude, under specified circumstances, any subdivision of the Department from coverage under chapter 10. Paragraph (2), relating to the authority of the President to suspend the application of provisions of chapter 10 with respect to any post, bureau, office, or activity of the Department, corresponds to section 7103(b)(2) but provides on the one hand somewhat broader authority in that the authority applies within the 50 States, and on the other hand somewhat narrower authority in that the authority may be applied only when the suspension is necessary in the interest of national security because of an emergency.

It should be noted that by reason of the definition of "employee" chapter 10 applies only with respect to the Foreign Service elements

of the covered agencies. Civil Service elements remain covered by chapter 71.

Section 1004—Employee rights

Section 1004 restates without substantive change the provisions of section 7102 relating to employee rights.

Section 1005—Management rights

Section 1005 sets forth rights which are reserved to management. The effect of this section is to place limits on the number of subjects about which management may bargain with a labor organization. Section 1005 differs somewhat from the corresponding CSRA provision, section 7106. The difference generally take into account differences between the Foreign Service system and other Government systems subject to the CSRA. The intent of section 1005 is two-fold: (1) to ensure that the scope of bargaining in the Foreign Service is as broad as it is under the CSRA; and (2) to ensure that all matters which are currently subject to negotiations in the Foreign Service will continue to be subject to negotiation under the bill. Section 1005 should be interpreted in accordance with this intent and the intent reflected in the general discussion of chapter 10.

Subsection (a) reserves to management certain specified rights subject to the qualifications in subsection (b). These rights are not subject to collective bargaining. The approach adopted in section 1005(a) is identical to that provided in section 7106(a). Paragraphs (1), (2), (3), (4), and (6) generally restate the management rights contained in paragraphs (1) and (2) of section 7106(a).

Paragraph (1) omits the words "types or classes." Paragraph (2) does not include the words "reduce in grade or pay" since these personnel actions do not occur under the Foreign Service system. Also in paragraph (2) the management right to "promote" which was contained in the original administration bill, is deleted and replaced by the right "to determine the number of members of the Service to be promoted and to remove the name of or delay the promotion of any member in accordance with regulations prescribed under section 605(b)". The committee understands that this language reflects the current status of the scope of bargaining with respect to promotions in the Foreign Service. Chapter 6 of the bill generally prescribes the promotion process for the Foreign Service, including the composition of selection boards (section 602(b)), the development of precepts for use by selection boards (section 603(b)), the basis for selection board review (section 603(a)), and the responsibility of the Secretary to make promotions in accordance with selection board rankings (section 605(a)) except in certain special circumstances (section 605(b)). Except for those matters specifically reserved to management under section 1005(a), all aspects of the promotion process are negotiable.

Paragraph (5) has no counterpart in section 7106, but the management right to determine the need for uniform personnel policies and procedures between or among foreign affairs agencies is somewhat analogous to situations involving Government-wide regulations in the Civil Service, which is discussed in connection with section 1002(5), *supra*.

Section 1005 (b) restates without substantive change section 7106 (b), and describes those matters over which management may elect to bargain, namely those matters described in paragraph (1), and those matters over which management has an obligation to bargain, namely those matters described in paragraphs (2) and (3).

The committee stresses that the exclusion of matters from the scope of bargaining by this section is not intended and should not be construed to impede full discussion between the Department and the exclusive representative on issues affecting the careers of members of the service.

Section 1006—Foreign Service Labor Relations Board

Section 1006 establishes the Foreign Service Labor Relations Board (FSLRB) within the Federal Labor Relations Authority.

The FSLRB is chaired by the Chairman of the Federal Labor Relations Authority and has two public members appointed by the Chairman upon nomination by affected agencies and labor organizations. FSLRB members are removable only for cause after notice and a hearing.

Section 1007—Functions of the Board

Section 1007 provides that the FSLRB is charged with supervising elections and certifying exclusive bargaining agents, deciding negotiability appeals and unfair labor practice complaints, resolving disputes concerning the effect, interpretation, or breach of a collective bargaining agreement and taking other actions necessary to effectuate the provisions of this chapter. Like the FLRA, the FSLRB has no authority to review the decisions of the Impasses Panel. Decisions of the FSLRB are to be consistent with FLRA decisions, except where special circumstances require otherwise. FSLRB decisions may not be construed as precedent by the FLRA or any court or other authority, for any decision under chapter 71 of title 5, United States Code. The FSLRB is authorized to prescribe regulations concerning its functions and the obligations of the Department and labor organizations thereunder, to interpret and apply the provisions of this chapter, to issue major policy determinations, to issue cease and desist and remedial action orders, and to defend or seek enforcement of its orders in the Court of Appeals for the District of Columbia in the same manner as is applicable to the FLRA under the CSRA. Administrative and staff support will be provided by the FLRA.

Section 1008—Functions of the General Counsel

Section 1008 provides that the General Counsel of the FLRA may investigate alleged unfair labor practices, file and prosecute complaints under chapter 10, and exercise such other functions as the FSLRB prescribes. The functions of the General Counsel are intended to be the same as under chapter 71 of title 5, United States Code.

Section 1009—Judicial review and enforcement

Section 1009, as amended by a committee amendment, essentially restates the judicial review and enforcement provisions of section 7123.

Section 1009(a) provides that, except with respect to decisions of the Foreign Service Grievance Board which are excluded from judicial review by section 1014(d), any person aggrieved by an FSLRB order may appeal to the United States Circuit Court of Appeals for the District of Columbia within 60 days. Section 1009(b) authorizes the Board to petition for enforcement of its orders and appropriate temporary relief or restraining order. Section 1009(c) provides that standard applicable to judicial review and enforcement of FLRA orders shall also apply to the FSLRB. Section 1009(d) provides that temporary relief may be provided by the United States District Court for the District of Columbia against a person or persons formally charged under section 1016 with engaging in an unfair labor practice.

Section 1010—Foreign Service Impasse Disputes Panel

Section 1010 provides for a Foreign Service Impasse Disputes Panel within the FLRA. The Panel corresponds to the Federal Service Impasse Panel under section 7119, and is modeled after that Panel. The Panel, like its namesake operating under Executive Order No. 11636, will resolve negotiation impasses between the Department and the exclusive bargaining representative. The Panel will carry over the basic composition of its predecessor. The Panel's decisions will be final and binding upon the parties unless the parties agree otherwise.

Section 1011—Exclusive recognition

Section 1011 restates with only minor substantive changes the provisions of section 7111 relating to exclusive recognition of labor organizations. Various wording differences in the original administration bill (H.R. 4674) were rejected and the provision was revised to closely track section 7111.

The major substantive difference between section 1011 and section 7111 is the provision in section 1011(d)(2) for so-called "preferential voting". When there are more than two choices on the ballot, such elections obviate the need for runoff elections. Since any election must be conducted by worldwide mail ballot thereby entailing substantial expense and time delay, a mechanism such as preferential elections is desirable for the Foreign Service.

Section 1012—Employees represented

Section 1012 corresponds to section 7112 relating to determinations of appropriate units for labor organization representation. There are two major differences between section 1012 and section 7112.

The first relates to the inclusion in the bargaining unit of supervisors. This has been discussed in full in connection with section 1002(8). The second major difference is that section 1012 will establish, by law, a single and separate worldwide bargaining unit for employees (as defined in section 1002(8)) of each agency subject to Chapter 10. Under section 7112, the FLRA determines—

in each case whether, in order to ensure employees the fullest freedom in exercising the rights guaranteed under . . . chapter [71], the appropriate unit should be established on an agency, plant, installation, functional, or other basis and shall determine any unit to be appropriate only if the determina-

tion will ensure a clear and identifiable community of interest among the employees in the unit and will promote effective dealing with, and efficiency of the operations of, the agency involved.

The committee is reluctant to establish, by law, a single bargaining unit, and has done so only because the parties involved favor continuing past practice which has existed since 1973. If in the future certain segments of the employee population are not effectively represented by an exclusive representative, that problem could not be cured by an administrative determination that a separate unit is appropriate to ensure that the interests of these employees are adequately represented. Such action is foreclosed by section 1012. The committee stresses that should any segment of the employee population not be adequately represented, it will promptly consider legislation to eliminate the single worldwide unit limitation. Finally, the committee's action with respect to this provision is not intended to indicate in any manner the committee's views as to what bargaining units are appropriate under section 7112.

Section 1013—Representation rights and duties

Section 1013 restates, except as discussed below without substantive change, the provisions of section 7114 relating to representation rights and duties of labor organizations and agencies.

Section 1013(e) (5), imposing on the Department and the exclusive representative the duty to negotiate jointly with respect to conditions of employment applicable to employees in more than one of the agencies authorized to utilize the Foreign Service personnel system, as determined by the heads of those agencies, has no direct counterpart under chapter 71. Section 1013(g) relating to the duty of the Department to consult has no counterpart in section 7014, but is similar to section 7117(d) relating to the duty to consult and should be applied consistent with that section. Under section 1013(g), for example, the exclusive representative should be given an opportunity to express views on such issues as proposed changes in the Standardized Regulations (Government, Civilians, Foreign Areas) which prescribe overseas allowances and differentials in implementation of 5 U.S.C. 5921-5925 for personnel of all agencies.

Section 1014—Resolution of implementation disputes

Section 1014 establishes a procedure for the resolution of disputes between the Department and the exclusive representative which arise out of the implementation of collective bargaining agreements. This section is modeled on sections 7121 and 7122 as those provisions relate to such "institutional" grievances.

Section 1014(a) provides that a dispute over the effect, interpretation, or a claim of breach of a collective bargaining agreement shall be resolved by negotiated procedures, which shall include provision for appeal to the Foreign Service Grievance Board. The Grievance Board, established by chapter 11 of the bill, is the statutory equivalent for the Foreign Service of third-party arbitration of individual employee grievances under chapter 71.

Section 1014(b) provides for review of Grievance Board actions by the Foreign Service Labor Relations Board at the request of either

party. The scope of the review is the same as that of FLRA review of arbitral awards under section 7122.

Section 1014(c) provides that Foreign Service Grievance Board action becomes final and binding on the parties to an implementation dispute if no request for review is filed within thirty days. Section 1014(d) provides that resolutions of disputes under this section are not subject to judicial review. These subsections parallel sections 7122 (b) and 7123(a). This subsection does not affect the administrative finality, subject to the right to judicial review, of an individual grievance as provided by section 1110 of the bill.

Section 1015—Unfair labor practices

Section 1015, as amended by a committee amendment, restates, with only one minor substantive difference, the unfair labor practices provisions of section 7116. The substantive difference relates to permitted informational picketing. Under section 1015 permitted informational picketing is limited to the United States in recognition of the inappropriateness of such picketing at embassies abroad. Under section 7116 there is no geographical limitation.

Some unfair practices are of such a nature that they could be committed by either the Department or a labor organization. Others could be committed only by the Department or only by a labor organization.

Unfair labor practices by either a labor organization or the Department include the following:

- Interfering with employee rights under the chapter;
- Refusing to consult or negotiate in good faith;
- Failing or refusing to cooperate in impasse procedures or decisions;
- Otherwise failing to complying with any provision of the chapter.

Unfair labor practices by the Department include the following:

- Encouraging or discouraging union membership;
- Sponsoring or controlling a union;
- Taking reprisal against an employee for filing a complaint under the chapter;
- Enforcing regulations that conflict with a pre-existing negotiated agreement.

Unfair labor practices by labor organizations include the following:

- Attempting to cause the agency to discriminate with regard to an employee's exercise of labor relations rights;
- Hindering a member's productivity or discharge of duties as an employee;
- Discriminating with regard to membership for prohibited reasons,
- Calling for or engaging in a strike or slowdown, or picketing in a labor-management dispute that interferes with Government operations, or condoning such activity by failing to take action to prevent or stop it.

An election of remedies provisions corresponding to section 7116(d) precludes the consideration of a complaint both as an unfair labor practice and under grievance procedures.

Section 1016—Prevention of unfair practices

Section 1016 restates without substantive change the provisions of section 7118 and authorizes the General Counsel of the FLRA to in-

investigate charges of unfair labor practices by the Department or by a labor organization. The General Counsel may issue a complaint pursuant to such charges, in which case a hearing will be held before the FSLRB or its designee. If the hearing substantiates the charge of an unfair labor practice, then a cease and desist order will be issued or other appropriate relief, including make-whole or *status quo ante* remedies, ordered. If no unfair labor practice is proven, the complaint will be dismissed.

Section 1017—Standards of conduct for labor organizations

Section 1017 restates without substantive change the provisions of section 7120 relating to standards of conduct for labor organizations.

Standards of conduct for labor organizations are administered and enforced by the Assistant Secretary of Labor for Labor-Management Relations. Labor organizations must file financial and other reports with the Assistant Secretary.

The FSLRB must withdraw exclusive recognition or take other appropriate disciplinary action if a labor organization is found to have violated the prohibition against strikes, work stoppages, or slowdowns.

Section 1018—Administrative provisions

Section 1018 prescribes basic policies regarding dues allotments which are cost-free to the exclusive representatives and revocable at 1-year intervals, official time for employees who negotiate and participate in other proceedings on behalf of labor organizations, and prohibitions on the use of official time for activities relating to the internal business of a labor organization. Section 1018 corresponds to sections 7115 and 7131, and is intended to be interpreted and applied in the same manner as those sections.

CHAPTER 11—GRIEVANCES

This chapter essentially reenacts part J of title VI of the 1946 Act. Some changes are made to conform to the style of the bill and for reasons of clarity and organizational format. Obsolete provisions are deleted, and the exclusive representative of employees in a bargaining unit is made the exclusive party who can invoke the jurisdiction of the Foreign Service Grievance Board on behalf of employees of the unit, except in cases of separation.

Section 1101—Definition of grievance

Section 1101(a)(1) generally restates the definition of grievance contained in section 692(1)(B) of the 1946 Act, as amended. "Grievance" is broadly defined to encompass any act, omission, or condition subject to the Secretary's control which is alleged to deny a United States citizen member of the Foreign Service rights or benefits (including salary or other compensation) authorized by law or regulation, or to otherwise constitute a source of concern or dissatisfaction to the employee. Some examples are listed: separation; adverse impact upon terms and conditions of employment or career status; disciplinary action; dissatisfaction with the working environment; prejudicial or potentially prejudicial defective entries in an employee's official personnel file; alleged reprisals for participating in the grievance

procedures; and alleged wrongful denial of allowances, premium pay, or other financial benefit.

Section 1101(a)(2) expands a parenthetical clause in section 691(1)(B) of the 1946 Act, which permitted an agency and the exclusive representative of the employees of that agency to agree to exclude matters from the scope of grievances. Under section 1101(a)(2), the agency and the labor organization may modify the scope of grievances as stated in the bill, not only to exclude additional matters but also to include new matters. This will permit the parties to a collective bargaining agreement to agree on additional functions for the Foreign Service Grievance Board which are compatible with the Board's primary responsibilities.

Section 1101(b) is patterned on that part of section 692(1)(B) of the 1946 Act which specifies the subjects on which grievances may not be filed and excludes certain matters from the definition of "grievance". Other than deletion of the reference to judgments on examination for appointment, which is deleted as unnecessary, and the addition of a reference to tenure boards (*cf.* section 306(b)), the exceptions are substantially the same as those in the 1946 Act.

Section 1101(c) provides that chapter 11 shall apply only to the Departments of State, Agriculture, and Commerce and to USICA and IDCA.

Section 1102—Grievances concerning former members

Section 1102 carries forward section 692(1)(C) of the 1946 Act. Former members of the Foreign Service, or their survivors, may file grievances within the period specified in section 1104, but only with respect to an alleged wrongful denial during the period of service of an allowance or other financial benefit. Grievances of members who are separated do not lapse because of the separation, but they may not subsequently challenge their separation by contending wrongful denial of allowances and financial benefits by virtue of their separations.

Section 1103—Freedom of action

Section 1103(a) carries forward the first part of section 692(5) of the 1946 Act. It protects participants in the processing of a grievance from any restraint, interference, coercion, harassment, discrimination, or reprisal.

Section 1103(b) and (c) carry forward the remainder of section 692(5) of the 1946 Act. These sections provide for the right of representation and for making witnesses available. The provision on representation has been modified to provide that a member of a bargaining unit represented by an exclusive representative may be represented only by that exclusive representative, except where the grievance concerns separation of the grievant from the Service. A member of the bargaining unit has a right to present a grievance in his or her own behalf, but the exclusive representative retains the right to be present at grievance proceedings. A grievant who is not a member of the bargaining unit or whose grievance concerns separation has the right at every stage of the proceeding to representation of his or her own choosing.

Section 1103(d) carried forward section 692(15) of the 1946 Act. It authorizes the Grievance Board to protect against disclosure of

proceedings or findings with respect to a grievant and requires the Department to maintain confidentiality.

Section 1103(e) carries forward section 692(9) of the 1946 Act, by requiring the Department to expedite the processing of security clearances whenever necessary to assure a fair and prompt resolution of a grievance.

Section 1104—Time limitations

Section 1104(a) carries forward section 692(3) of the 1946 Act. It excludes consideration of any grievance under these procedures not presented within a period of three years after the occurrence or occurrences giving rise to the grievance. A new provision has been added, stating that the three-year period may be shortened by agreement between the Department and the exclusive employee representative. The subsection also requires the Grievance Board to exclude from the three-year (or shorter agreed) maximum period any time during which the grievant was unaware of the grounds for the grievance and could not have discovered such grounds through reasonable diligence.

Section 1104(b) is based on section 692(1) of the 1946 Act. It provides for the Department and the exclusive representative to negotiate procedures for Departmental review of grievances. The exclusive representative or an individual employee who is not a member of the bargaining unit may file a grievance with the Board if his or her grievance is not resolved under the Department procedures within ninety days of written presentation.

Section 1105—Foreign Service Grievance Board

Section 1105 is derived from section 692(2) of the 1946 Act and provides for the continuation of the Board established under the 1946 Act.

The Grievance Board consists of not fewer than five members. Appointees may not be serving as officers, employees, or consultants of the Department or as members of the Service.

Members of the Board shall be appointed for two-year terms by the Secretary of State from nominees approved by agency management and the exclusive representatives of employees. If the agencies and exclusive representatives fail to agree, the nominees will be determined by parties striking names from a list.

Members of the Board who are not employees of the Government, including retired Federal employees, are compensated at the daily rate for GS-18.

Section 1105(d) provides that Board members may be removed by the Secretary of State only after written notice and opportunity for a hearing and only for corruption, neglect of duty, malfeasance, or demonstrated incapacity of the member to perform his or her functions.

Section 1105(e) authorizes the Department to provide the Board with physical and personnel resources for performing its functions.

Section 1106—Board procedures

Section 1106 carries forward section 692 (4), (10), and (11) of the 1946 Act.

The Grievance Board is authorized to adopt regulations concerning its organization and procedures and is required to conduct a hearing at the request of a grievant in any case involving disciplinary action, a grievant's retirement from the Service under section 607 or 608, or issues which the Board decides can best be resolved through hearing or oral argument.

A verbatim transcript of the hearings must be kept and testimony must be given under oath or affirmation. Further, parties may examine and cross-examine witnesses and present documentary evidence and may engage in pre-hearing discovery through interrogatories and depositions.

Section 1106(6) provides that in cases where the Board holds no hearing, its record of proceeding shall be fully available to the parties for review and supplementation by the parties, and the Board shall base its decision solely upon the record.

Section 1106(7) permits the Board to conduct hearings through panels.

Section 1106(8) authorizes the Board to grant a grievant interim relief by ordering the Department to suspend actions such as separations, disciplinary actions, or recovery of moneys from a grievant, where those actions are related to a grievance pending before the Board. The Board's authority to grant interim relief does not affect the authority of an agency head, chief of mission, or principal officer to exclude a grievant from official premises or from performance of official functions for good cause as stated in writing.

Section 1106(9) is new but reflects existing practice of the Board. It states the grounds upon which the Board may reconsider a decision.

Section 1107—Board decisions

Section 1107 carries forward section 692 (12), (13), and (14) of the 1946 Act.

Section 1107(a) provides that the Board must decide grievances expeditiously and make decisions setting forth findings of fact and the reasons for the decision.

Section 1107 (b) and (c) authorizes the Board to order the Department, within the limitations of the Secretary's authority, to take prescribed courses of remedial action. The Department must comply with such remedial orders unless it seeks judicial review as provided in section 1110. To assure administrative finality, only judicial review is permitted.

Section 1107(d) provides that if the Board finds that a grievance is meritorious and that remedial action should be taken which relates directly to promotion or assignment of the grievant, or to other remedial action not otherwise provided for under section 1107, or if the Board finds that the evidence before it warrants disciplinary action against any employee of the Department or member of the Service, it shall make an appropriate recommendation to the Secretary. Upon receiving the Board's recommendation, the Secretary must make a written decision thereon within 30 days. If the Secretary does not reject the recommendation within the 30-day period, the Secretary must implement the recommendation. A recommendation may be rejected only on the grounds that implementation of the recommendation would be contrary to law or would adversely affect the foreign

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policy or national security of the United States. If the Secretary rejects the recommendation in whole or in part, the Secretary must specify the reasons for the rejection. Pending the Secretary's decision, *ex parte* communications by interested persons with the Secretary are prohibited.

Section 1108—Access to records

Section 1108 derives from section 692 (7) and (8) of the 1946 Act.

Section 1108(a), which is new, provides that denial of access to an agency record to a grievant may be raised by the grievant in connection with the grievance. Section 1108(d) provides that the Board may consider the denial in reaching its decision.

Section 1108(b) provides that the Board shall have broad access to any agency record it deems relevant and material to the grievance. Any requested agency record may be withheld only upon certification in writing by the agency head or his or her deputy that disclosure of the record to the Board and to the grievant would adversely affect the foreign policy or national security of the United States or that such disclosure is prohibited by law. Section 1108(c) authorizes the Board to turn over to the grievant relevant and material agency records it obtains.

Section 1108(e) provides that the grievant shall be permitted access to the record of proceedings and the decision of the Board.

Section 1109—Relationship to other remedies

Section 1109 carries forward section 693 of the 1946 Act. It precludes a grievant from seeking relief under these grievance procedures when he or she has sought relief under another provision of law, regulation, or Executive order. The grievant will be bound by his or her election to use these grievance procedures or the other procedures. This election of remedies provision modifies the general exclusion of matters subject to another specific statutory hearing procedure under section 1101(b)(4), by providing that a grievant may elect to seek relief under this chapter of a complaint that is also cognizable under section 1206 of title 5, United States Code.

Section 1110—Judicial review

Section 1110 carries forward section 694 of the 1946 Act. It provides that any aggrieved party may obtain judicial review of regulations prescribed by the Secretary and of final action of the Secretary or the Grievance Board. Suit may be filed in the District Courts of the United States in accordance with chapter 7 of title 5, United States Code. The standard of judicial review is that provided in 5 U.S.C. 706.

TITLE II—TRANSITION, AMENDMENT TO OTHER LAWS, REPEALS AND MISCELLANEOUS PROVISIONS

CHAPTER 1—TRANSITION

The transition chapter sets forth the provisions necessary to enable the employees affected by the bill to be converted to the Foreign Service or to the Civil Service, as appropriate. The tests of conversion to the Foreign Service include the commitment of the employee to be available for worldwide assignment as well as the existence of the

appropriate skills for positions abroad. This chapter provides procedures for the use of these criteria and a maximum three-year period for conversion to be completed. After the three-year period has run, the conversion provisions of this chapter will no longer be operative.

Section 2101—Pay and benefits pending conversion

Section 2101 provides (except with respect to USICA employees within the coverage of section 2104(b)) that members of the Foreign Service eligible for conversion under sections 2102 and 2103, relating to conversion to the Foreign Service Schedule and the Senior Foreign Service, shall receive pay and other benefits as if converted on the effective date of the Act.

Section 2102—Conversion to the Foreign Service Schedule

Section 2102 provides authority for the conversion of present members of the Service, including Foreign Service officers, Foreign Service Reserve and Reserve Unlimited officers, and Foreign Service staff officers and employees, to appropriate classes in the new Foreign Service Schedule. To be converted under this section, personnel must be available for assignment abroad. Personnel who are not currently available for worldwide assignment will be converted to the Foreign Service Schedule only if the Secretary certifies there is need for their services in the Foreign Service and they agree in writing to accept availability for worldwide assignment as a condition of continued Foreign Service employment. Otherwise they will be converted to the Civil Service under section 2104. This section is intended to eliminate the continued presence in the Foreign Service of personnel who serve only in the United States. It is not intended to affect personnel who have served abroad and whose availability for assignment abroad is temporarily interrupted by personal circumstances.

Section 2103—Conversion to the Senior Foreign Service

Section 2103 provides for conversion to the new Senior Foreign Service.

Section 2103(a) provides that Foreign Service officers and Reserve officers (with limited and unlimited tenure), who are available for worldwide assignment and are serving under appointments at class 2 or higher, may elect to enter the Senior Foreign Service within 120 days following enactment of the bill.

Section 2103(b) provides that the Secretary shall grant a limited Senior Foreign Service appointment to a Reserve officer with limited tenure who makes an election under subsection (a). Section 2103(c) provides that the Secretary shall recommend to the President a career appointment in the Senior Foreign Service of a Foreign Service officer or Reserve officer with unlimited tenure who makes such an election.

Section 2103(d) states an exception for Reserve officers who are not currently available for assignment abroad. Such officers will be allowed to enter the Senior Foreign Service only if the Secretary certifies that there is a need for their services and they agree in writing to accept availability for worldwide assignment as a condition of employment. This provision is intended to serve the same purpose as section 2102(b) of the bill.

Under section 2103(e), an officer who does not submit an election to enter the Senior Foreign Service within the 120-day period speci-

fied in subsection (a) may later submit a request for a Senior Foreign Service appointment. In that event, the officer may be appointed to the Senior Foreign Service only in accordance with such conditions as the Secretary may prescribe consistent with the provisions in chapter 6 regarding promotion into the Senior Foreign Service.

Section 2103(f) provides that an officer who does not elect to enter the Senior Foreign Service (or whose request for entry after the initial 120-day period is denied) must leave the Foreign Service within three years after the effective date of the Act. If the officer is a participant in the Foreign Service Retirement System, benefits under that system may be immediately available. Prior to leaving, the conditions of service for these officers will be governed by the bill but they will not be eligible for performance pay or limited extensions of their career appointments, and their assignment possibilities will be limited. This subsection does not apply to officers whose conversion to the Senior Foreign Service is prevented by their unavailability for worldwide assignment. Such officers would be converted to the Civil Service under section 2104 if they wish to remain in Government service.

Section 2104—Conversion from the Foreign Service

Section 2104 provides that members of the Service serving in categories subject to conversion to the Foreign Service Schedule or the Senior Foreign Service who are not so converted because they are not available for worldwide assignment shall be converted to a position in a comparable grade of the General Schedule or to the Senior Executive Service. The purpose of this provision is to convert those current "domestic" Foreign Service personnel to the Civil Service without loss of salary or grade.

The 3-year mandatory conversion period for "domestic" Foreign Service personnel in the International Communication Agency (USICA) will not commence until July 1, 1981, in consideration of a preexisting collective bargaining agreement with the labor organization representing those personnel.

Section 2105—Conversion of certain positions in the Department of Agriculture

Section 2105 provides for certain positions in the Foreign Agricultural Service designated by the Secretary of Agriculture to be occupied by career members of the Foreign Service. A person currently serving in such a position may elect to be converted to the Foreign Service. If such person declines conversion, he or she will nonetheless be deemed a member of the Foreign Service for purposes of allowances, differentials, and similar benefits as determined by the Secretary of Agriculture so long as he or she continues to hold the designated position.

Section 2106—Preservation of status and benefits

Section 2106 provides that the conversions made pursuant to this chapter shall be accomplished in a manner which preserves the status and benefits that members of the Service enjoyed prior to conversion. Section 2106(a)(1) provides that conversion to a new personnel system, category, or salary schedule shall be to the most closely corresponding class or grade and step and shall be without a reduction in salary.

Section 2106(a) (2) provides a table for conversions of members of the Foreign Service to the new Foreign Service Schedule, as well as specifying the method for determining assignment to salary steps within a class. Special provision is also made for accelerated consideration of promotions to FS-4, a class left empty by the conversion table.

Section 2106(b) permits those employees who are converted to the Civil Service to elect to remain participants in the Foreign Service Retirement and Disability System, so long as they continue to serve in an agency authorized to use the authorities of the bill. Such an individual could choose between the Civil Service system's provisions for a higher maximum annuity and exemption from mandatory retirement or the Foreign Service system's provisions for earlier retirement and a somewhat more liberal computation formula. Section 2106(c) provides that members shall be converted to a type of appointment which corresponds as closely as possible in tenure to the type of appointment from which they were converted. Section 2106(d) provides that individuals serving under appointments in the Service or in other offices or positions continued by the bill may continue to serve and need not be reappointed by virtue of the enactment of the bill or the repeal of the 1946 Act. This includes, for example, current chiefs of mission and current members of the Foreign Service Grievance Board. Finally, section 2106(e) defers for ten years or until they become eligible for an immediate annuity the application of the bill's provisions for retirement based on relative performance with respect to current personnel who are not now subject to such retirement (*see*, section 608).

Section 2107—Regulations

Section 2107 provides that the Secretary of State, under the direction of the President, shall prescribe regulations to implement the transition chapter.

Section 2108—Authority of other agencies

Section 2108 provides that other agency heads shall implement chapter 1 of title II in accordance with regulations prescribed by the Secretary of State under section 2107 and in consultation with the Secretary. Sections 2107 and 2108 ensure that the conversion provisions will be implemented in a uniform and consistent manner.

CHAPTER 2—AMENDMENTS RELATING TO FOREIGN AFFAIRS AGENCIES

Section 2201—Basic authorities of the Department of State

Section 2201(a) adds eight new sections to the Act to provide certain Basic Authorities for the Department of State. That Act now contains a number of statutory authorities which apply to the Department of State as an agency. Section 2201 would place in that Act (hereafter referred to as "the Basic Authority") a number of authorities now found in the Foreign Service Act of 1946, as amended, or in annual State Department authorization acts.

(1) *Gifts* (new section 25). Section 1021 of the Foreign Service Act of 1946, as amended, contains the authority of the Secretary of State to accept and use gifts for the purposes of the Department of State, including the Foreign Service. Section 25 is materially identical to current law.

(2) *Authorization to Retain Attorneys* (new section 26). Section 1031 of the Foreign Service Act of 1946, as amended, provides that the Secretary of State may authorize a principal officer of the Foreign Service to procure legal services. This authority will also be available to USICA and IDCA.

(3) *Employment Opportunities for Family Members* (new section 27). Section 401(a) of the Foreign Relations Authorization Act, Fiscal Year 1979, Public Law 95-426, 92 Stat. 963 (1978), and section 413(C) of the Foreign Relations Authorization Act, Fiscal Year 1978, Public Law 95-105, 91 Stat. 844 (1977), contain provisions designed to facilitate the employment of members of the families of United States Government employees abroad. Those provisions are not incorporated in sections 333 or 451 of this bill because they do not pertain to appointment to the Foreign Service or compensation in the Foreign Service. The provisions involved are a direction to seek to negotiate agreements to facilitate employment of family members abroad and an authorization for such members to accept employment abroad unless to do so would violate a local law or damage the interests of the United States.

(4) *Use of Vehicles* (new section 28). Section 914 of the Foreign Service Act of 1946, as amended, provides that the Secretary of State may authorize a principal officer to approve the use of Government-owned or leased vehicles for transportation at post when public transportation is unsafe or unavailable. New section 28 contains the same authority, but adds authority to do this when such use would be advantageous to the Government. This authority may be used uniformly for all agencies at a post, or for a specific agency with special problems as determined by the principal officer. It may be used in situations where it is less costly to provide transportation than to pay the cost of shipping privately-owned vehicles, where some U.S. citizen employees or members of their families are not permitted to drive by local law or custom, or where some are not permitted to import a privately-owned vehicle by the local government or are effectively prevented from doing so by reason of import duties in excess of the purchase value of the privately-owned vehicle. When the Government elects to provide transportation to employees, the employees concerned may not import vehicles at Government expense.

(5) *Educational Facilities* (new section 29). This section is identical to section 1081 of the Foreign Service Act of 1946, as amended, which authorizes the Secretary of State to establish, operate, and maintain abroad primary schools and school dormitories and related educational facilities for primary and secondary schools, as well as to make grants for such purposes and to otherwise provide for such facilities.

(6) *Malpractice Protection* (new section 30). Section 1091 of the Foreign Service Act of 1946, as amended, provides that the exclusive remedy for malpractice claims against State Department medical personnel arising out of health services furnished in the course of official duties shall be a tort claim against the United States. It also contains the related procedural provisions for holding such medical personnel harmless through insurance or otherwise from personal liability. New section 30 is a restatement of present law.

(7) *Post Employee Service* (new section 31). This section contains authorities for the operation of, and assistance to, employee operated

commissionary and other services and facilities. This authority is now found in Title IV, Part C, of the Foreign Service Act of 1946, as amended, which applies generally to United States Government employees abroad. Section 921 of the 1946 Act is the substantive provision which corresponds to new section 31 of the Basic Authority.

(8) *Security Officers and Other Per Diem* (new section 32). This section authorizes the Secretary of State to pay subsistence expenses to Department security officers and other members of the Service and Department employees who are required to be on protracted travel status without regard to limits on per diem set by 5 U.S.C. 5702. This provision is designed to give the Secretary of State authority (equivalent to that of the Secretary of Treasury vis-a-vis Secret Service agents) with respect to security officers of the Department assigned to protective security missions, and with respect to other employees on protracted travel status. This authority will enable the Secretary to pay extraordinary subsistence expenses to security officers of the Department (including agents on detail to the Department by agreement of the heads of their agencies) assigned to protect foreign visitors to the United States, and provides similar authority for other employees in the same circumstances. Security officers assigned such missions are required to stay in the very expensive hotels usually used by visiting dignitaries. They cannot pay their out-of-pocket subsistence expenses on the \$50 per day limitation imposed by 5 U.S.C. 5702, so this section authorizes the Secretary to disregard that limitation.

(9) *Title* (new Section 33). This section provides that the provisions of the 1956 Act, as amended, may be cited as the "State Department Basic Authorities Act of 1956".

Section 2201 also provides that the Director of the International Communication Agency and the Director of the International Development Cooperation Agency may continue to utilize the authority of section 25 (acceptance and use of gifts) and section 26 (retaining attorneys). Under current law these two agencies have these authorities by virtue of provisions which permit them to utilize the authorities of the Foreign Service Act of 1946, as amended. In the case of ICA these provisions are contained in section 2 of Executive Order No. 10477, section 10 of Public Law 90-494, 82 Stat. 810 (1968), and section 7 of Reorganization Plan No. 2 of 1977. In the case of IDCA these provisions are found in section 625(d)(2) of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2385).

Sections 2202, 2203, and 2204—Conforming amendments

Sections 2202, 2203, and 2204 conform to the appropriate citations of this bill various references to the 1946 Act contained in the Peace Corps Act (22 U.S.C. 2501 *et seq.*), the Foreign Assistance Act of 1961 (22 U.S.C. 2151 *et seq.*), and the Arms Control Disarmament Act (22 U.S.C. 2551 *et seq.*). Section 2401(c) of the bill provides that references in other laws to the 1946 Act shall be considered references to corresponding provisions of the new Act, but it is desirable to amend specifically those provisions of these laws which are directly related to the personnel authorities of the three agencies concerned. The conforming amendments are as follows:

(a) Sections 5(f)(1)(A) and (h), 7(a), 13(b), 14(b), and 15(a) of the Peace Corps Act (22 U.S.C. 2504, 2506, 2512, 2513, and 2514);

(b) Sections 625(d)(1), 629(b), 631(b), and 361(c) of the Foreign Assistance Act (22 U.S.C. 2385, 2389, and 2391); and

(c) Sections 42 and 48 of the Arms Control and Disarmament Act (22 U.S.C. 2582 and 2588).

Section 2202 provides that the President may use Foreign Service personnel authorities for those employees of the Peace Corps who are available for worldwide assignment and who occupy positions requiring worldwide availability.

Section 2204 also continues the current authority of the Arms Control and Disarmament Agency for a single renewal or extension of a limited Foreign Service appointment. This exceptional authority will allow that small agency to staff effectively those overseas positions requiring continuity over periods exceeding five years.

Section 2205—Repealed provisions

Section 2205 repeals a number of provisions of law which will be superseded, or made obsolete or redundant by the enactment of the bill. The committee notes the applicable rules of construction set out in sections 108 and 109 of title 1, United States Code, and stresses that the repeal by this Act of any other provision of law repealing yet another Act, should not be construed to revive the latter.

All provisions of the Foreign Service Act of 1946, as amended, are either replaced by Title I of the bill, moved into the Basic Authority of the Department of State by section 2201, or considered obsolete or duplicative of other provisions of law. Accordingly, the 1946 Act is repealed in its entirety.

Two provisions of the Foreign Relations Authorizations Act, Fiscal Year 1979, are repealed. These are:

- Section 401, which pertains to employment of family members overseas, and which has been incorporated in sections 311 and 407 of this bill and in section 27 of the Basic Authority under section 2201(a) of the bill; and
- Section 413, which requires a report to Congress on review of Foreign Service personnel requirements and compensation by January 20, 1979. The report was submitted at that time.

Section 413 of the Foreign Relations Authorization Act, Fiscal Year 1978, is repealed. That section, which relates to employment of Foreign Service spouses, is covered by the provisions of sections 311, 407, 703(d), 704, and 705(b).

The following provisions of the Foreign Relations Act, Fiscal Year 1977, are repealed:

- Section 117, required a report which has been submitted to Congress on proliferation of personnel categories within the Department of State and the United States Information Agency by a date 180 days after enactment;
- Section 120, which expressed the sense of Congress that career Foreign Service personnel should occupy a greater number of ambassadorial positions, has been incorporated in substance in section 304(a)(2) of title I of the bill; and
- Section 522, which provided for conversion into the Foreign Service Retirement System of Foreign Service staff officers and employees with unlimited appointments, has accomplished its purpose.

Section 6 of the Department of State Appropriations Authorization Act of 1973 is repealed. That section required a report on political contributions by nominees for ambassador or minister and is incorporated in substance in section 304(b)(2) of the bill.

The Act to promote the foreign policy of the United States by strengthening and improving the Foreign Service personnel system of the International Communication Agency through establishment of a Foreign Service Information Officer Corps, Public Law 90-494, 82 Stat. 810 (1968), is repealed. Some provisions of that Act are inconsistent with chapters 3 and 4 of title I of the bill which eliminate staff and reserve personnel categories and provide for a Senior Foreign Service. Other provisions are carried forward by specific provisions of this bill, such as sections 202 and 203 relative to compatibility, and section 301(c) making veterans' status an affirmative factor in appointment.

Section 104(c) of the Mutual Educational and Cultural Exchange Act of 1961 (22 U.S.C. 2454(c)), providing that the Secretary of State may employ or assign Foreign Service Reserve, staff, or alien employees to perform functions under the Cultural Exchange Act, is repealed as obsolete.

Certain provisions of the Foreign Assistance Act are not conformed by section 2203 of the bill, but are repealed. Section 625(d)(2), which authorizes utilization of the authorities of the Foreign Service Act, becomes unnecessary because section 202 of the bill makes clear that the Director of the IDCA may utilize the new Foreign Service personnel authorities in the same manner in IDCA as the Secretary of State does for the Department of State.

Section 625(e), which provides authority for a selection-out system, becomes unnecessary because the Director of IDCA, like the Secretary of State and the Director of ICA, has this authority under sections 607 and 608 of the bill;

Section 625(g), which provides for application of foreign language competence principles, is eliminated, but is still applicable to IDCA under section 702 of the bill; and

Section 625(k), which provides for staged conversion of AID employees into the Foreign Service Retirement System, will be repealed effective January 1, 1982, at which time the process will have been completed.

Section 7(b) of the Peace Corps Act, which authorizes selection-out for Peace Corps staff, is eliminated as unnecessary because similar authorities under sections 607 through 609 of the bill will be available to the Peace Corps under section 202 of the bill.

Sections 14 and 16 of an Act to provide certain basic authority for the Department of State (22 U.S.C. 2679a, 2680a) are repealed, having been substantially reenacted as sections 412 and 207, respectively, of the bill.

Section 124(a)(2) of the International Development and Food Assistance Act of 1977, which provides authority for the performance by the Inspector General of the Foreign Service of the functions of the former Inspector General, Foreign Assistance, is superseded by section 209 of the bill.

A series of provisions making adjustments to the annuities provided under the Foreign Service retirement and disability system are re-

pealed since they have been fully implemented and will be superseded by the present bill.

Section 2206—Other conforming amendments

Section 2206 lists a number of technical amendments to the legislation that substitute references to this bill in place of parallel references to the 1946 Act.

CHAPTER 3—AMENDMENTS TO TITLE 5, UNITED STATES CODE

Section 2301—Reemployment rights

Section 2301(a) amends chapter 35 of title 5 by adding a new subchapter VI consisting of one section, section 3597. New section 3597 provides that an employee of any agency who accepts, with the consent of the head of that agency, a limited appointment in the Foreign Service under section 309 of the bill, is entitled, upon the expiration of that appointment, to be reemployed in that employee's former position or in a corresponding position in that agency. An employee so reemployed is entitled to any within-grade increases in pay which the employee would have received if the employee had remained in the former position in the agency.

Section 2301(b) makes a conforming amendment to the analysis for chapter 35.

Section 2302—Salary for ambassadors at large

Section 2302 amends section 5313 of title 5, by adding ambassadors at large to those positions in Executive Level II of the Executive Schedule. The current pay payable for Executive Level II is \$60,662.50.

Section 2303—Advances of pay incident to departures from posts abroad

Section 2303 amends section 5522 of title 5, to permit the advance payment of pay, allowances, and differentials whenever an employee is authorized or ordered to leave a post abroad due to unsettled conditions. Advance payments may be made even if an evacuation has not been ordered.

Section 2304—Premium pay

Section 2304 amends paragraph (2) of section 5541 of title 5, to entitle members of the Foreign Service, other than members of the Senior Foreign Service, to premium pay in accordance with the provisions of subchapter V of chapter 55 of title 5.

Section 2305—Severance pay

Section 2305 is a technical amendment to section 5595(a)(2)(vi) of title 5, United States Code, to ensure that the amendments made by the bill will not result in certain members of the Foreign Service becoming entitled to severance pay under section 5595 of title 5, United States Code, as well as section 609(b)(1) of the bill. Section 609(b)(1) authorizes severance pay for members who are separated under the time-in-class provisions or are selected out. The amendment provides that members who receive benefits under section 609(b)(1) are not entitled to also receive severance pay under section 5595 of title 5.

This reflects current practice under which members are not entitled to both benefits.

Section 2306—Attorneys fees in back pay cases

Section 2306, as redesignated by a committee amendment, amends section 5596(b) of title 5, to provide that attorneys fees may be awarded to members of the Foreign Service under the same circumstances in which they may be awarded to Civil Service employees under the CSRA.

Section 2307—Separate maintenance allowance

Section 2307, as redesignated by a committee amendment, amends section 5924(3) of title 5, to broaden the authority to pay a separate maintenance allowance. Currently such an allowance may only be paid when an employee is separated from his family because of dangerous, notably unhealthful, or excessively adverse living conditions, or for the convenience of the Government. Section 2307 would also permit the payment of an allowance when special needs or hardship involving an employee or an employee's spouse or dependents warrant such payment.

Section 2308—Education allowance

Section 2308, as redesignated by a committee amendment, amends section 5924(4) (B) of title 5, to eliminate a distinction that allows 1 or 2 annual round trips, depending upon type of education, for dependents of some Government employees, but only 1 round trip for each type of education for dependents of other Government employees. This amendment would authorize, with respect to all Government employees, 1 round trip for dependents to obtain secondary education and 2 round trips for dependents traveling to obtain undergraduate college education.

Section 2309—Posts requiring special incentives

Section 2309, as redesignated by a committee amendment, amends section 5925 of title 5, to provide that any employee who is granted a so-called hardship post differential may be granted an additional differential for an assignment to a post determined to have especially adverse conditions of environment which warrant additional pay as a recruitment and retention incentive. Such an additional differential may be paid for each assignment to a post determined to have such condition, may be paid periodically or in a lump sum, and may not exceed 15 percent of the rate of basic pay of that employee for the period served under that assignment. This section is intended to provide agencies with an additional tool which may be used, depending on budgetary considerations, to recruit members to serve in especially arduous locations overseas.

Section 2310—Advances of pay

Section 2310(a), as redesignated by a committee amendment, amends chapter 59 of title 5, by adding a new section 5927. The new section provides that up to three months' pay may be paid in advance to an employee upon assignment of the employee to a post in a foreign area. Section 2310(b), as redesignated by a committee amendment, amends the analysis for chapter 59 of title 5, to reflect the addition of new section 5927.

Section 2311—Danger pay allowance

Section 2311(a), as redesignated by a committee amendment, amends chapter 59 of title 5, to add a new section 5928. The new section provides that an employee serving in a foreign area may be granted a danger pay allowance on the basis of civil insurrection, civil war, terrorism, or wartime conditions which threaten physical harm or imminent danger to the health or well-being of the employee. A danger pay allowance may not exceed twenty-five percent of the basic pay of the employee. Section 2311(b), as redesignated by a committee amendment, amends the analysis for chapter 59 of title 5, to reflect the addition of new section 5928. The committee stresses that the new danger pay allowance provided under proposed new section 5928 should be limited to situations where there is imminent danger to the life or safety of Federal employees serving in the area. It is conceivable that such a situation could arise at any post: at posts where a post differential under section 5925 of title 5, as amended by the bill, is authorized because of especially adverse conditions and at posts where it is not authorized. The committee intends that simultaneous payments under sections 5925, as amended, and 5928 be limited by regulation to a maximum of 50 percent of an employee's basic pay.

Section 2312—Leave

Section 2312, as redesignated by a committee amendment, amends sections 6301 and 6304 of title 5, to provide that leave accumulated by members of the Senior Foreign Service will not be subject to the limitation on accumulated leave generally applicable to employees. This is the same as is provided for members of the Senior Executive Service.

Section 2313—Retirement credit for imprisoned foreign nationals

Section 2313, as redesignated by a committee amendment, amends section 8332(b) of title 5, United States Code, to provide that periods of imprisonment of a foreign national employee compensated under section 410 of the bill shall be creditable for Civil Service Retirement and Disability System benefits if the foreign national was covered by the system while employed by the United States or is qualified for an annuity under the System on the basis of other service.

Section 2314—Conforming amendments to title 5

Section 2314, as redesignated by a committee amendment, makes a number of conforming amendments to title 5, and changes references to sections of the 1946 Act to correspond to references to sections of the bill.

CHAPTER 4—SAVING PROVISIONS, CONGRESSIONAL OVERSIGHT, AND EFFECTIVE DATE

Section 2401—Saving provisions

Section 2401 is necessary to preserve all actions taken under the 1946 Act or any other Act repealed, modified, or affected by this bill until modified, revoked, or superseded. The section also provides that references to superseded laws shall be considered to include references to corresponding provisions of the bill. It is similar to section 1135 of the 1946 Act.

Section 2402—Congressional oversight of implementation

Section 2402 requires a report to the Congress by the Secretary of State within fifteen months after the bill's effective date. The report is to describe steps taken in furtherance of the objective of maximum compatibility among agencies authorized to use the Foreign Service personnel system, and should include the Secretary's recommendations on further steps in this regard. This section also requires the Secretary to keep the Congress informed on a continuing basis of progress made in pursuit of this objective. Continuing reports are also required concerning projected ranges of appointment, promotion, and attrition in the Service. On all these matters, the Secretary is instructed to consult with the exclusive representative, if any.

Section 2403—Effective date

Section 2403, as amended by a committee amendment, states that the bill will become effective on October 1, 1980, except that chapter 8 will become effective on the later of October 1, 1980 or 90 days from the date of enactment. Rights of former spouses under section 814(a) will apply to individuals who, after that effective date, become former spouses of a participant or former participant in the System.

Cost

The committee has reviewed the cost estimate furnished by the Congressional Budget Office pursuant to section 403 of the Congressional Budget Act of 1974 and adopts that estimate as the cost estimate of the committee for the purpose of clause 7 of House Rule XIII. The cost estimate prepared by the Congressional Budget Office is set forth below:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., May 15, 1980.

HON. JAMES M. HANLEY,
*Chairman, Committee on Post Office and Civil Service,
U.S. House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for H.R. 6790, the Foreign Service Act of 1980, as ordered reported on April 24, 1980.

Should the Committee so desire, we would be pleased to provide further detail on the attached cost estimate.

Sincerely,

ALICE M. RIVLIN, *Director.*

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

1. Bill number: H.R. 6790.
2. Bill title: Foreign Service Act of 1980.
3. Bill status: As ordered reported by the House Committee on Post Office and Civil Service on April 24, 1980.
4. Bill purpose: The purpose of this legislation is to strengthen and improve the Foreign Service of the United States. The legislation promotes maximum compatibility between the Foreign Service personnel

system and other personnel systems in government. It creates the Senior Foreign Service and simplifies the structure of Foreign Service personnel categories and salaries. Further, the legislation provides a system of incentive payments and awards to encourage and reward outstanding performance.

5. Cost estimate:

[By fiscal years, in millions of dollars]					
	1981	1982	1983	1984	1985
Function 150: Estimated costs.....	46.4	58.7	63.9	69.5	75.2
Function 602:					
Estimated budget authority.....	16.7	18.9	20.9	23.0	25.1
Estimated outlays.....	1.6	1.4	1.4	1.5	1.9

6. Basis of estimate: For purposes of this estimate it is assumed that this bill will be enacted on October 1, 1980. Sections of the bill with a potential cost impact are discussed below. All sections, except for sections 801-827 require subsequent authorization and appropriation and therefore result in no direct budget impact. All costs have been adjusted for inflation in future years based on CBO economic assumptions.

Section 209—Inspector General of the Foreign Service

This section establishes an Inspector General of the Foreign Service and details the functions of this office. Although not specifically required by law in the past, the State Department currently has such an office and therefore assumes no additional costs will result from this section.

Section 405—Performance pay

Performance pay is a lump sum payment awarded to members of the Senior Foreign Service for meritorious or distinguished service. In any fiscal year, up to 50 percent of the Senior Foreign Service is eligible for performance pay. The amount of the award is limited to 20 percent of basic salary except that six percent of those eligible may receive up to \$10,000 and one percent of those eligible may receive up to \$20,000.

<i>Estimated cost—performance pay</i>		<i>Millions</i>
Fiscal year:		
1981	-----	-----
1982	-----	\$5.8
1983	-----	6.3
1984	-----	6.9
1985	-----	7.4

No cost is estimated for fiscal year 1981 because the State Department has indicated that the rating and selection cycle cannot be completed in time. The 1982 estimate is based on the methodology of the Office of Personnel Management (OPM) and assumes that the 50 percent eligible will receive an average award of 12-14 percent of their basic salary.

Section 406—Within Class Salary Increases

This section specifies that any member under the Foreign Service Schedule shall receive an annual step increase while in steps one

through nine and a biennial step increase while in steps 10 through 13. Previously, the law stipulated that Foreign Service Officers receive an annual step increase. The Foreign Service Officer pay schedule contained only seven steps while the new pay scale contains fourteen steps. Members of the Foreign Service staff had, by regulation, received an annual step increase for steps one through seven and a step increase every fourth year thereafter.

<i>Estimated cost—step increases</i>	
Fiscal year:	Millions
1981	\$5.3
1982	5.7
1983	6.2
1984	6.7
1985	7.3

These figures were derived by applying an average three percent step increase to the eligible population under the Foreign Service Schedule and deducting the estimated costs under the previous system.

Section 412—Special Differential and Premium Pay

Under this section, the Secretary may continue to pay special differentials to Foreign Service Officers (FSO) who are required to perform work in excess of normal requirements. In addition, it entitles FSO's to receive premium pay for overtime work. FSO's are not currently eligible for overtime pay.

<i>Estimated cost—premium pay</i>	
Fiscal year:	Millions
1981	\$0.5
1982	.5
1983	.6
1984	.6
1985	.7

Net additional costs of this provision are estimated at \$.5 million based on the costs incurred in fiscal year 1977 under a similar provision, adjusted for inflation.

Section 607—Retirement for Expiration of Time in class

The Secretary is authorized to limit the time that members may spend in a particular salary class. Members face mandatory retirement when this limit is exceeded. Under current law the Secretary may set limits only for Foreign Service Officers. This section extends the authority to all members of the Foreign Service. Some savings may result from this provision. However, since the limitations are the discretion of the Secretary, no basis exists for estimating the amount.

Section 704—Training Authorities

This section expands the current authority to provide orientation and language training for family members of Foreign Service employees. Whereas current law limits reimbursable training costs to \$300 per month per individual for up to 6 months, the bill specifies no limits. The Department of State, however, expects that the former limits will be maintained by regulation. These limits would only be raised in the event of greatly increased training costs or where extended language training is necessary, and would therefore increase costs by no more than \$10,000 per year.

This section also authorizes functional training for dependents of Foreign Service members. The Department of State plans to provide such training only when space is available, thereby incurring no additional costs.

Sections 801-827—Retirement Provisions

H.R. 6790, if enacted, would increase the mandatory retirement age from 60 to 65 years. This would have a budgetary impact of decreasing outlays from the retirement fund. The estimate assumes that those people who now retire under current mandatory age provisions will retire uniformly over a six year period under H.R. 6790.

The increase in basic pay resulting from enactment of various provisions in H.R. 6790 would affect the retirement fund in three ways. It would:

- (1) Increase the employee and employer contributions to the fund;
- (2) Increase the unfunded liability of the fund; and,
- (3) Increase the initial annuities of future retirees.

The increase in unfunded liability of \$125.1 million would be amortized in thirty equal annual installments of \$9.6 million each. In addition, the increase in net income to the fund (additional payments less outlay increases) would earn interest and thus also increase budget authority.

The following table summarizes the budgetary effect on the Foreign Service Retirement fund that would result from enactment of H.R. 6790.

[By fiscal years, in millions of dollars]					
	1981	1982	1983	1984	1985
Estimated outlays:					
Changing mandatory retirement.....	-0.7	-2.2	-3.4	-4.5	-5.3
Increased annuities.....	2.3	3.6	4.8	6.0	7.2
Total.....	1.6	1.4	1.4	1.5	1.9
Estimated budget authority:					
Increased employee/employer contributions.....	6.6	7.7	8.6	9.5	10.3
30-yr amortization payments.....	9.6	9.6	9.6	9.6	9.6
Interest earned.....	.5	1.6	2.7	3.9	5.2
Total.....	16.7	18.9	20.9	23.0	25.1

In addition, this bill, if enacted, would permit former spouses of annuitants to receive a pro rata share of the annuity and survivor benefits. This provision would redistribute but not increase outlays.

Section 901—Travel and Related Expenses

This provision extends the authority of the Secretary to pay travel and related expenses of Foreign Service employees and their families. Travel costs previously not covered are:

- (1) Family members joining a Foreign Service employee in a place of temporary duty (TDY);
- (2) Travel and relocation costs for employees and their families assigned to or within the United States;
- (3) One round-trip per year for children of divorced Foreign Service employees;

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(4) The costs of emergency evacuation and care of young children of Foreign Service employees when their parents are unable to accompany them; and

(5) An additional rest and relaxation trip per year in the event of extraordinary circumstances.

<i>Estimated cost—travel and related expenses</i>		<i>Millions</i>
Fiscal year:		
1981	-----	\$1.2
1982	-----	1.4
1983	-----	1.5
1984	-----	1.6
1985	-----	1.7

This Department of State estimate is based on the following assumptions:

(1) The TDY travel expenses for families will total \$96,000 per year.

(2) The 1981 domestic transfer costs will be \$516,000 and thereafter will decrease to \$443,000.

(3) Approximately 440 children per year will be eligible for trips at average costs of \$850.

(4) Evacuation trips for approximately 53 young children will cost an average of \$700.

(5) The total annual cost for additional rest and relaxation travel is estimated to be \$169,000.

Other agencies affected will pay a total of approximately \$170,000 for these provisions.

Section 904—Health Care

This section authorizes the continuation of health care to a member of the Foreign Service or to his or her family after the member leaves the Service or dies or dissolves the marriage. This provision continues past practice with the addition of medical coverage for divorced spouses.

<i>Estimated cost—health care</i>		<i>Millions</i>
Fiscal year:		
1981	-----	\$0.3
1982	-----	.3
1983	-----	.3
1984	-----	.3
1985	-----	.4

Based on internal divorce and health statistics, the Department of State estimates the medical costs for 24 divorced spouses per year to total approximately \$260,000.

Section 1006—Foreign Service Labor Relations Board (FSLRB)

This section defines the functions of the Board and establishes the position of the chairperson and two other members. Because the FSLRB is already provided in current law, additional costs will be incurred only for the members. The two members are to be compensated for travel and for each day they perform their duties. Their compensation is at the daily equivalent of the level V salary of the Executive Schedule. The Department of State estimates that each member will be compensated at approximately \$2,500 per year for an

estimated annual cost of \$5,000. Since these members are likely to be local residents, no travel costs are assumed.

Section 1107—Board Decisions

This section authorizes the Foreign Service Grievance Board to pay attorney fees incurred by an employee in cases where the Board determines that the agency acted in bad faith, and at all times when the employee is the prevailing party and the decision is based on a finding of discrimination. The State Department estimates that there will be 25 such cases per year. Assuming an average cost of \$800 per caseload, the estimated annual cost for payment of attorney fees is \$20,000.

Section 2102—Conversion to the Foreign Service Schedule

This section provides for conversion of Foreign Service Officers (FSO) Foreign Service Reserve Officers (FSR) and Foreign Service Staff Officers (FSS) to the Foreign Service Schedule. The Foreign Service Schedule established in section 403 of this bill provides for a ten class system with 14 salary steps within each class. The salaries of the 10 classes and the first 10 steps correspond to those of the General Schedule (GS). The salaries for steps 11 through 14, which have no corresponding GS links, are increased by three percent per step.

<i>Estimated cost—Conversion</i>		<i>Millions</i>
Fiscal year:		
1981	-----	\$37.6
1982	-----	41.1
1983	-----	44.8
1984	-----	48.6
1985	-----	52.4

For purposes of this estimate, the eligible population is based on data provided by OPM on the foreign service as of September 25, 1979. These employees were then converted to the class and step required by this bill. This data was adjusted for wage and step increases consistent with the Administration policy to arrive at a 1981 data base. From 1981-1985 the step and class structure is assumed to remain constant and is only adjusted for cost of living increases.

Section 2103—Conversion to the Senior Foreign Service

This section describes the procedure for conversion of Foreign Service Officers to the Senior Foreign Service. Officers currently serving in classes 2 or 1 must request appointment to the Senior Foreign Service. Eligible officers who do not request such appointment within 120 days of enactment of this bill must retire after three years.

<i>Estimated cost—Conversion</i>		<i>Millions</i>
Fiscal year:		
1981	-----	\$0.2
1982	-----	.2
1983	-----	.2
1984	-----	.3
1985	-----	.3

This estimate assumes that all eligible Foreign Service Officers will convert to the Senior Foreign Service on the date of enactment and therefore would receive increased pay as a result of the conversion. Average salary before conversion is estimated at \$52,679; average salary after conversion is estimated at \$52,785.

Section 2105—Conversion of Certain Positions in the Department of Agriculture

This section requires the conversion of certain members of the Foreign Agriculture Service (FAS) to the Foreign Service. Members of the FAS so converted will be transferred out of the Civil Service Retirement Fund and into the Foreign Service Retirement Fund. No net costs are estimated for this conversion during the projection period.

Section 2106—Preservation of Status and Benefits

This section outlines the procedure for converting the four foreign service personnel systems, utilized under current law, into one unified Foreign Service Schedule as indicated in the table below. This section also specifies criteria for grade and step conversion.

FSO-3, FSR-3, FSRU-3, or FSS-1	FS-1	GS-15
FSO-4, FSR-4, FSRU-4, or FSS-2	FS-2	GS-14
FSO-5, FSR-5, FSRU-5, or FSS-3	FS-3	GS-13
	FS-4	GS-12
FSO-6, FSR-6, FSRU-6, or FSS-4	FS-5	GS-11
FSO-7, FSR-7, FSRU-7, or FSS-5	FS-6	GS-9
FSO-8, FSR-8, FSRU-8, or FSS-6	GS-7	GS-8
	FS-8	GS-7
	FS-9	GS-6
	FS-10	GS-5
	FS-10	GS-5

Since the conversion table does not automatically place anyone into the FS-4 category, the section also provides that career members of the FSO-6, FSR-6, FSRU-6 and FSS-4 shall be considered for promotion into the FS-4 class within six months after enactment of this legislation. The cost of this provision follows:

<i>Estimated cost—conversion</i>		<i>Millions</i>
Fiscal year:		
1981		\$2.0
1982		4.4
1983		4.8
1984		5.2
1985		5.6

This estimate assumes that half of the members eligible for promotion will be promoted into the FS-4 category six months after enactment of this legislation. The cost of the promotion per person is the average difference between compensation in class FS-5 and compensation in class FS-4, approximately \$4.9 thousand.

Section 2306—Separate Maintenance Allowance

Families of Foreign Service members who elect not to accompany the member to a new foreign post will be provided an allowance to maintain a separate household.

<i>Estimated cost—conversion</i>		<i>Millions</i>
Fiscal year:		
1981		\$3.1
1982		3.4
1983		3.7
1984		4.0
1985		4.3

It is estimated that this provision will result in a net savings because the savings from not moving the family are greater than the

allowance for maintaining the separate household. The average Foreign Service family relocation cost is \$40,000 and the separate maintenance allowance is \$35,000 for a net savings of \$5,000 per family. It is estimated that approximately 620 families will elect to maintain separate households.

Section 2307—Education Allowance

Current law provides travel costs for children of the employees of the Department of State, International Development Cooperation Agency and International Communication Agency, who are stationed abroad. Travel costs were provided at the rate of two trips per year for children in college and one trip per year for children in secondary school.

This section provides only one trip per year for both categories of children. There are no savings, however, because under current law the agencies already restricted travel to one trip per year.

Section 2308—Posts Requiring Special Incentives

This section provides a bonus of up to 15 percent of basic pay as an incentive to recruit and retain personnel at posts with adverse environmental conditions.

Fiscal year:	Estimated cost—incentive pay	Millions
1981	-----	\$2.0
1982	-----	2.2
1983	-----	2.4
1984	-----	2.7
1985	-----	3.0

This estimate assumes 18 posts will be eligible for the incentive pay based on environmental conditions in fiscal year 1980. The 535 employees at these posts will receive 15 percent of the \$24,600 average annual salary. The estimated costs from 1982-1985 hold constant the number of eligible posts but allow for increases in basic pay.

Section 2310—Danger Pay Allowance

A special allowance of up to 25 percent of basic pay is provided for employees who serve in dangerous foreign areas.

Fiscal year:	Estimated cost—danger pay allowance	Millions
1981	-----	\$0.4
1982	-----	.5
1983	-----	.5
1984	-----	.6
1985	-----	.7

Based on fiscal year 1980 conditions, this estimate assumes approximately 110 employees staffing three dangerous posts will receive approximately \$4,000 in danger pay.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Linda Gard, Sherri Kaplan, and Rita Seymour.

10. Estimate approved by:

C. G. NUCKOLS
(For James L. Blum,
Assistant Director for Budget Analysis).

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OVERSIGHT

Under the rules of the Committee on Post Office and Civil Service, the Subcommittee on Civil Service is vested with legislative and oversight jurisdiction over Federal employees, including members of the Foreign Service, generally. As a result of its consideration of this matter, the subcommittee concluded that there is ample need and justification for the enactment of this legislation.

The committee received no report of oversight findings or recommendations from the Committee on Government Operations pursuant to clause 4(c) (2) of House Rule X.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(1) (4) of House Rule XI, the committee has concluded that the enactment of H.R. 6790, as amended, will have no inflationary impact on the national economy.

ADMINISTRATION VIEWS

Set forth below are the reports of the Office of Management and Budget and the Department of State on H.R. 6790.

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF MANAGEMENT AND BUDGET,
Washington, D.C., April 1, 1980.

HON. JAMES M. HANLEY,
Chairman, Committee on Post Office and Civil Service, House of Representatives, Washington, D.C.

DEAR JIM: The Office of Management and Budget and the Office of Personnel Management have reviewed H.R. 6790, the current version of the proposed "Foreign Service Act of 1980," and I wish to advise your Committee of the Administration's strong objections to the bill's pay provisions. When the bill was submitted initially by the Administration, the President had not decided on the linkages, pay rates, or the provisions for conversion to the new Foreign Service Schedule. He has now reached a decision on these matters, and we are taking this opportunity to inform you of it.

As H.R. 6790 now stands, it includes, in sections 403, 2106, and the related sections, a new pay system for the Foreign Service which is vastly different from that included in the bill as proposed by the Administration and is at odds with the President's decisions. Accordingly, those provisions of the bill are not acceptable to the Administration.

Under the Federal Pay Comparability Act of 1970, the President is responsible for adjusting Foreign Service pay each year at the same time he adjusts General Schedule pay. For the purpose of this adjustment, Foreign Service pay rates are related to General Schedule pay rates through a series of "linkages", that is, grade levels under the two pay systems which have been determined to be of an equivalent level of work, and thus appropriately paid the same rates of pay. The Office of Personnel Management conducted a major review of these linkages and found that they were in need of change. Separately, the Department of State was directed by Congress to review Foreign Service pay rates, and the contractor who performed that study also found a need

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for change in the linkages, although the exact changes indicated by that study were somewhat different from those of the OPM study. Both of these studies were reviewed exhaustively by an interagency task force, which developed several options for the consideration of the President. The President has determined that a change in the linkages is warranted, and that the appropriate change is one that reasonably accommodates the concerns raised by both studies.

The new linkages decided on by the President for implementation with the new Foreign Service schedule are shown in the attached table. These linkages would provide an average increase in Foreign Service pay of \$1,422, or 5.33 percent, and would cost approximately \$15 million annually. While the President is, of course, concerned about this additional cost, he feels very strongly that the Foreign Service must be paid fairly, and that this expense is warranted in order to provide comparable pay treatment for Foreign Service employees as required under the comparability principle.

However, H.R. 6790 in its present form goes far beyond the changes required by the President's decision. Section 403 of the bill would adopt a set of linkages that would substantially overpay the Foreign Service in relation to the General Schedule. Further, the new linkages, and the bill's provisions for converting present employees to the new pay rates, would cost nearly \$34 million the first year and \$200 million over 5 years. It would increase Foreign Service pay by an average of nearly 12 percent, and approximately 1800 or 17 percent of Foreign Service employees would receive increases of between 20 and 25 percent. These increases would, of course, be in addition to the seven percent pay raise last October and whatever general pay raise is provided in the coming October. We believe these provisions of H.R. 6790 are completely unwarranted.

In addition, we must object in the strongest terms to the fact that section 403 restricts the President's current authority under the Federal Pay Comparability Act to adjust linkages over time, as changes occur in the duties and responsibilities for management of the executive branch's pay systems. We view this restriction as unacceptable since the President's authority for linkage is absolutely essential in carrying out his responsibility for management of the statutory pay systems.

Accordingly, the Administration urges that sections 403, 2106, and the related sections be removed from H.R. 6790, and that instead only those pay provisions, without schedules, which originally appeared in H.R. 4674 be included in this bill. If this is done, the President plans to implement the new Foreign Service schedule with the conversion and linkages shown in the attached table.

Finally, we will shortly supply additional comments on a number of other objectionable features in some of the provisions of H.R. 6790, including those affecting overseas allowances, family benefits, and divorced spouses.

Accordingly, in view of the above, enactment of H.R. 6790 in its present form would not be in accord with the program of the President.

Sincerely,

JOHN P. WHITE,
Deputy Director.

Enclosure.

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LINKAGE PROVIDING COMPARABILITY BETWEEN THE FOREIGN SERVICE AND THE GENERAL SCHEDULE

Current grade	Current linkage	Current 1st step pay ¹	New Grade	New linkage	New 1st step pay ¹
FSO-3		GS-14.40	FS-1	GS-15	GS-15.00
FSO-4	GS-13	GS-13.00	FS-2		GS-13.38
FSO-5		GS-11.76	FS-3	GS-12	GS-12.00
FSO-6		GS-10.38	FS-4		GS-10.68
FSO-7		GS-8.54	FS-5		GS-8.76
FSO-8	GS-7	GS-7.00	FS-6		GS-7.20
FSS-1		GS-14.40	FS-1	GS-15	GS-15.00
FSS-2		GS-13.00	FS-2		GS-13.38
FSS-3		GS-11.76	FS-3	GS-12	GS-12.00
FSS-4		GS-10.38	FS-4		GS-10.68
FSS-5		GS-9.22	FS-5		GS-8.76
FSS-6		GS-8.10	FS-6		GS-7.20
FSS-7		GS-7.02	FS-7		GS-5.95
FSS-8		GS-5.98	FS-8	GS-5	GS-5.00
FSS-9		GS-4.97	FS-9		GS-4.32
FSS-10	GS-4	GS-4.00	FS-9		GS-4.32

¹ Approximate.

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF MANAGEMENT AND BUDGET,
Washington, D.C., April 18, 1980.

HON. JAMES M. HANLEY,
Chairman, Committee on Post Office and Civil Service, House of Representatives, Washington, D.C.

DEAR JIM: This is in further reference to H.R. 6790, the proposed "Foreign Service Act of 1980," now pending before your Committee.

The Administration proposal for Foreign Service reform, introduced as H.R. 4674, was designed as a companion measure to last year's Civil Service Reform Act. That proposal was the product of extensive review within the Executive branch and consultation with the Foreign Service community. It was the first comprehensive revision of the law governing the Foreign Service since 1946. We support its objectives and look forward to early enactment of a bill that will strengthen and improve the Foreign Service for years to come.

We are aware that over the past several months, subcommittees of your Committee and the House Foreign Affairs Committee have put substantial effort into hearings and markup of this bill. That this effort has been productive is reflected in the wide areas of agreement that now exist and the mutually acceptable provisions in many important areas. At the same time, however, H.R. 6790 includes certain features which we believe, taken in the aggregate, seriously undermine its overall value. I wrote to you on April 1, 1980, about the pay provisions of the bill. The enclosure to this letter indicates our serious concerns about other provisions and amplifies our views on the pay provisions.

Many of the matters noted in the enclosure fall within the special responsibility of the Post Office and Civil Service Committee for Government personnel policy generally. Certain of the issues have implications beyond the Foreign Service, and we think that your Committee will wish to consider them from a broad, Government-wide point of view. Since we did not have an opportunity to comment formally on many of these issues when the bill was considered in the House Foreign Affairs Committee, we wish to make our position clear

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for consideration by your Committee. We are sending copies of this letter to Chairmen Zablocki and Fascell.

Because the Administration is strongly committed to achieving sound Foreign Service reform, we believe it would be regrettable to have the legislation burdened by unnecessarily expensive or undesirable features at a time when the public is increasingly demanding prudent Government management and avoidance of unnecessary expenditures for Government personnel.

We strongly urge the Committee to adopt the modifications suggested in the enclosure. Agency staffs stand ready to assist in working with the Committees to permit expeditious resolution of the various problems we see in the current version of this legislation, with the mutual objective of producing an acceptable Foreign Service reform measure in this session of the Congress.

As indicated in our letter of April 1, detailing the Administration's objections to the pay features, enactment of H.R. 6790 in its present form would not be in accord with the program of the President.

Sincerely,

JOHN P. WHITE, *Deputy Director.*

Enclosure.

ADMINISTRATION POSITION ON SELECTED PROVISIONS OF H.R. 6790

A. ADDITIONAL PAY SECTIONS REQUIRING CONFORMING MODIFICATIONS

In further amplification of our earlier letter of April 1, 1980 on Foreign Service pay linkage, we call attention to the related pay sections in H.R. 6790 that would require conforming modifications.

In addition to sections 402 and 2106(a)(2)(A) and (B), noted in the earlier letter, these are sections 406, within-class salary increases (statutory prescription of time in class); 501, classification of positions (last sentence); 2101 and 2104, conversion, as discussed below.

Section 406

This section, patterned after that in title 5, United States Code, for employees under the General Schedule, would prescribe automatic within-class increases for Foreign Service personnel after prescribed periods of service. We do not believe a statutory prescription of time in class is appropriate for the Foreign Service because the nature of some foreign assignments, the quality of work performed and individual qualifications require more flexibility in advancement patterns than is true of the General Schedule. We believe the Secretary of State should continue to have the discretion he has today to prescribe step advancements and to change the pattern if necessary. Accordingly, we believe section 406 should be modified to conform with section 442 of H.R. 4674.

Section 501

The last sentence of this section directs the Secretary of State, in classifying positions, "to give appropriate weight" to "job factors relating to service abroad." The job factors of overseas assignments are already recognized in the design and linkage of the Foreign Service Schedule and should not be considered a second time in classification decisions as this would compensate twice for the same factor. In addi-

tion, this sentence of section 501 would require the Secretary to give weight in job classification to "pay practices applicable to United States citizens employed abroad by U.S. corporations." This requirement injects compensation factors into classification determinations. However, the specific duties, responsibilities and qualifications of a particular job are the only appropriate factors to be considered in classification decisions. Both of these classification requirements are inconsistent and duplicative of the President's authority to establish pay linkage. Accordingly, we strongly urge this sentence be deleted from section 501.

Section 2101

In effect this section would allow all present Foreign Service employees to convert to the new Foreign Service system immediately and then later those who are not committed to an overseas career would be shifted to the General Schedule. We are strongly opposed to this provision. For those destined for the General Schedule, it is a costly and unnecessary detour, so to speak, through the new pay system by those who will not become a part of it. We estimate that this method of converting will cost about four times the cost of a direct conversion to the General Schedule. A far more straightforward plan, that would be fair to the taxpayer and consistent with joint Presidential and Congressional efforts to reduce outlays from the January budget totals, and yet also be fair to the employee, would transfer employees directly from the current Foreign Service Schedules to the General Schedule or to the new Foreign Service schedules. This would require retaining the existing FS pay schedules for the transition period, with annual pay increases effected in the normal way by the President under the comparability process. This approach would provide those who convert to the GS system an average increase in their salary of about \$500 per year. We believe the number of employees carried on the old schedules would be small and their retention would not be an excessive administrative burden.

Accordingly, we recommend that Section 2104 (b) (2) be deleted, and that Section 2101 be revised as follows:

Section 2101. Pay and Benefits Pending Conversion.

The President shall prescribe salary rates in accordance with the salary classes established under Sections 414 and 415 of the Foreign Service Act of 1946, for individuals in the Foreign Service immediately before the effective date of this Act until they are converted under section 2102, 2103 or 2104 of this Chapter. Salary rates for such individuals shall be adjusted at the same time and to the same extent as rates of basic pay are adjusted for the General Schedule.

B. USE OF FOREIGN SERVICE ACT AUTHORITIES

H.R. 6790 would allow the Departments of Commerce and Agriculture unrestricted, department-wide use of Foreign Service (FS) personnel authorities, allowances, and benefits. Allowing these departments to use the FS Act for any of their employees going overseas would provide preferential treatment not accorded overseas employees

of the Department of Defense or other domestic agencies. Such practice would seriously weaken one of the major justifications for H.R. 6790, which is to "purify" the FS personnel system so that in the future it will apply only to employees who commit themselves to a career of predominantly overseas service.

Accordingly, we urge that subsection (a) of section 202 of H.R. 6790 be amended to read as follows:

"Sec. 202.

Other agencies utilizing the foreign service personnel system.—(a) The Director of the International Communication Agency and the Director of the United States International Development Cooperation Agency with respect to their respective agencies, the Secretary of Agriculture with respect to the Foreign Agricultural Service, and the Secretary of Commerce with respect to those employees of the Department of Commerce performing functions transferred to the Department of Commerce from the Department of State by Reorganization Plan No. 3 of 1979 may utilize the Foreign Service personnel system in accordance with this Act."

Parallel changes also may be required in sections 1003 and 1101(c) of the bill.

C. OVERSEAS ALLOWANCES

Sections 2308 and 2310 of H.R. 6790 provide two new overlapping benefits, potentially adding as much as 65 percent to the basic salary of employees overseas. Section 2308 provides an additional post differential allowance to all Government employees overseas of up to 15 percent of base pay for excessively adverse "hardship posts", on top of the existing 25 percent maximum for such assignments. Section 2310 provides, in addition, a new "danger pay allowance" of up to 25 percent of base pay for overseas employees, in areas where there is danger of civil insurrection, civil war, terrorism, or wartime conditions threatening physical harm or danger to the health or well-being of the employees. Taken together, these two benefits are costly and excessive. While the element of danger at a post is already a recognized factor in determining the amount of the existing post differential allowance, the Administration would not oppose an additional, special "danger pay allowance" for exceptionally hazardous situations. This would mean a maximum total allowance of 50 percent, based on a maximum 25 percent "danger pay allowance" that could be paid in addition to the post differential allowance, but only for actual time spent in areas designated for the purpose, and with the understanding that the authority would be used sparingly.

Section 2201 would add a new section 32 to the State Department Organic Act (page 219 of the bill) to permit higher subsistence allowances to State Department personnel who spend "extraordinary" amounts of time in travel status. We cannot support this amendment. It represents preferential treatment not accorded similar personnel, such as auditors and inspectors in other agencies in the United States who also must travel for extended periods in order to carry out their duties. We see no special reason to single out State Department per-

sonnel in such occupations and therefore strongly recommend that the proposed section 32 be deleted.

Section 2307 would extend authority for reimbursement for travel expenses for an annual roundtrip of dependents of all overseas employees who are obtaining their high school education in the United States, and for expenses of two roundtrips annually for dependents receiving undergraduate college educations in the States. This benefit currently is restricted to the foreign affairs agencies. The Administration would not oppose its extension to all overseas employees as proposed in the bill, provided the language is amended to eliminate the recently-enacted second roundtrip for college undergraduates, so that a uniform single annual roundtrip would be authorized for both high school and college students.

We believe such an approach, which provides the same treatment of high school and college-age dependents, is both equitable and adequate, and that Government payment of two trips a year for older, college-age students is excessive.

D. FAMILY PROVISION

Section 311(c) of the bill would authorize the Secretary of State to prescribe regulations governing the overseas employment of family members of all employees of all agencies. In his testimony before the House Foreign Affairs Committee, Director Campbell of the Office of Personnel Management recommended that OPM retain regulatory authority for this program for agencies, such as the Department of Defense and others outside the Foreign Service, which have far more employees overseas than the foreign affairs agencies. He noted that the language of the bill does not make clear that the Secretary's regulations would be merely advisory, nor does the language recognize OPM's legitimate role in regulating employment outside the Foreign Service. We concur with OPM and believe section 311 should be amended to specify that OPM has primary responsibility for employment outside the Foreign Service under this authority.

Section 704 would permit training grants, without dollar limits, for family members for any approved program of study, a much broader authority than that proposed by the Administration bill, which authorized not to exceed \$300 per month, up to a maximum of six months for an individual for language and orientation training. We recommend that section 704 be modified to limit grants to orientation or language training directly related to overseas assignments so that it could not be construed as a general educational program for dependents.

Section 814 would provide a statutory, automatic alimony payment to a divorced spouse during an employee's lifetime unless a court decides otherwise within one year. The statutory amount would be a maximum of half the employee's own annuity if the marriage coincided with the entire career, or a lesser amount based on the percentage the number of years of marriage during the employee's creditable service is to the employee's total number of years of creditable service. A similar, automatic statutory share would be provided for the survivor annuity, in the absence of an employee election or court determination, not to exceed the maximum benefit existing law allows a spouse.

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We are strongly opposed to the provision for an automatic, statutory portion of the employee's annuity as survivor or alimony benefits in the absence of employee or court action, and to the provision allowing a court only one year to overturn the statutory apportionment of alimony. Existing law already authorizes alimony payment from retirement annuities on order of, and in the amount specified by a court. We do not believe the Federal retirement law should be used to interfere arbitrarily in domestic relations matters, however desirable the objective might be.

We believe it is essential to leave matters of domestic relations to the jurisdiction of State courts and to resolution under the case law that has evolved in this complex area. It is far better that such Courts, rather than an inflexible Federal statute, define the relationship between and determine the rights of, the parties in a divorce action, based on the facts peculiar to each case.

The Administration proposed legislation for the Foreign Service (copy enclosed) that would provide survivor benefits to a divorced spouse in an amount determined by the employee or the Court. The purpose is to remove barriers to the courts reaching the entire property in a divorce settlement. Accordingly, we recommend that Chapter 8 of the bill be revised with respect to divorced spouses along the lines of the Administration's proposal.

Section 901, paragraph (3) and (15), would provide travel liberalizations. Paragraph (3) would permit payment of travel and subsistence expenses for families to accompany employees to a temporary duty assignment. Paragraph (15) would add a new travel benefit that would permit annual reimbursement of roundtrip travel expenses of children of divorced employees to visit whichever parent does not have custody. We recommend that these liberalizations, which would add to travel costs at a time of budget restraint, when the Congress and the Executive Branch are attempting to reduce such costs, be deleted from the bill.

Attachment.

UNDER SECRETARY OF STATE FOR MANAGEMENT,
Washington, February 12, 1980.

HON. THOMAS P. O'NEILL, JR.,
Speaker of the House of Representatives.

DEAR MR. SPEAKER: Enclosed for consideration of the Congress is draft legislation to provide survivor benefits for divorced spouses of members of the Foreign Service.

In 1978 the President established his Commission on Pension Policy to undertake a comprehensive review of all facets of the Nation's retirement programs. At that time, he asked for a moratorium on further retirement liberalization except where essential pending completion of the study. The study is not scheduled for completion for another year. This proposal is put forward at this time under that exception clause. It is therefore proposed as an interim step and will be reevaluated in the light of the Commission's recommendations in this sensitive and important area.

The nature of a Foreign Service career makes it especially difficult for spouses of members of the Foreign Service to attain any inde-

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pendent economic security. Not only do the frequent transfers between Foreign Service posts all around the world, inherent in a Foreign Service career, mitigate against the establishment of an independent career for a spouse, but the opportunity for paid employment of any kind in most foreign countries for a spouse is minimal because of language, cultural and legal barriers. Foreign Service spouses therefore have little opportunity either to establish a pension in their own right or to develop marketable skills that can be used to earn a livelihood when the necessity arises. In the event of a divorce, a former spouse of a member of the Foreign Service is denied any survivorship rights under the Foreign Service retirement system under current law. This is so despite the length of the marriage or desire on the part of a member or a court to award any portion of the member's survivor benefit to the former spouse.

The enclosed legislation would authorize provision of survivor benefits to former spouses of members of the Foreign Service either by election of the member or by court order. The basic approach we are recommending, if a member does not act voluntarily, is to give a court authority to reach a member's existing survivor annuity and to award it to a qualified former spouse, or to divide it between a former spouse and a second spouse in the same manner a court is authorized to divide joint and community property at the time of a divorce. In addition, we are proposing to permit election of certain additional survivor annuities, on a fully actuarial basis, to benefit a second or subsequent spouse.

We believe a court should be free, when making an award to a former spouse, to take into consideration such matters as needs of the parties and fault, as well as length of the marriage, in order to arrive at an equitable division. We do not believe the award should be based solely on years of marriage, as under H.R. 2857. The latter bill would enable a spouse to desert a member because life in the Foreign Service is difficult or for any other reason, and automatically receive a share, both of the member's annuity and survivorship benefit regardless of any other consideration such as child support. There are such cases and to ignore them would be inequitable.

We have drafted the proposal as an amendment of the proposed "Foreign Service Act of 1979" as contained in H.R. 4674. A detailed explanation of the proposed legislation is enclosed.

The proposal is designed to keep its cost to the minimum. It would increase the Foreign Service retirement system's normal cost—the ongoing annual cost—about .03 percent of payroll, or by \$95,000 per year at current payroll levels. The legislation would create an unfunded liability—a one-time phase-in cost of about \$3 million. This would be amortized over 30 years by annual appropriations of \$240,000.

The Office of Management and Budget advises that from the standpoint of the Administration's program, there is no objection to the submission of this proposal.

Respectfully,

BEN H. READ.

Enclosure : Draft legislation.

CONTENTS

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884 Election of Special Survivor Annuity.

Summary Explanation.

Section By Section Analysis.

Amend H.R. 4674, a bill "To promote the foreign policy of the United States by strengthening and improving the Foreign Service of the United States, and for other purposes," by inserting the following new sections on page 91 following line 13:

"SEC. 883. SURVIVOR ANNUITIES FOR DIVORCED SPOUSES.

"(a) DEFINITIONS.

When used in this section and in section 884, unless otherwise specified, the term—

- (1) "court" means any court of any State, or the District of Columbia;
- (2) "court order" means any court decree of divorce, or the terms of any court order or court-approved property settlement agreement incident to any court decree of divorce;
- (3) "divorce" includes annulment;
- (4) "participant" includes former participant;
- (5) "election" means a voluntary action by a participant or an award by a court.

"(b) COURT ORDERS.

"(1) GENERAL AUTHORITY. A court may order payment of a survivor annuity to a former spouse in an amount and subject to such conditions as a participant is authorized to elect or specify for a former spouse under this section, and section 884 whether or not such an election is made by the participant. A qualifying court order providing for payment of a survivor annuity to a former spouse shall be accepted by the Secretary as a valid election by the participant under this section and given the same effect. A court may order cancellation or reduction of a previous election by a participant for a spouse, if this is necessary because of limitations imposed by subsection (c)(3), to permit an election for a former spouse in an amount authorized by this section. Court orders may not provide for retroactive payments.

"(2) CRITERIA FOR PAYMENTS. Payments under this section and section 884 pursuant to a court order shall not become effective until (A) receipt of the court order and determination by the Secretary that the

order is qualifying under this section and (B) the participant has been given notice of the terms of the court order and the Secretary's determination that it is a qualifying order. To be qualified under this section the Secretary must determine that an order—

“(A) meets the requirements of this chapter;

“(B) expressly requires payment from the Fund to a qualified former spouse;

“(C) defines the amount to be paid to the former spouse in a way which can be readily calculated from information in the normal files of the Department; and

“(D) does not make payment contingent upon events about which the Secretary has no reliable and practical means of obtaining timely notice.

If the Secretary determines that a court order is not qualified under this section, the former spouse and other interested parties shall be notified of the determination and the basis therefor.

“(3) CHALLENGE OF ORDER. If a participant or annuitant believes that a court order found by the Secretary to be qualified is not in fact qualified, the participant shall be responsible for obtaining from the court withdrawal or amendment of its order.

“(4) INFORMATION TO COURTS. At the request of any court of competent jurisdiction, the Secretary shall inform the court of the retirement benefit formula and the entitlement under the System of any participant involved in a divorce proceeding and shall, through appropriate channels, inform the courts of the availability of this information.

“(c) SURVIVOR ANNUITIES.

“(1) ELIGIBILITY. To be eligible for a survivor annuity, a former spouse must have been married to a participant for at least ten years during the latter's employment in the Foreign Service of the United States which shall include all periods during which a participant was contributing to the Fund under subsection 811(a).

“(2) TIME OF ELECTION. A participant may elect a survivor annuity for an eligible former spouse at the time of divorce, at the time of retirement or completion of recall service, at the effective date of this section, or when so ordered by a court. An election for a former spouse under this section shall be irrevocable except as specified by the terms of the election.

“(3) LIMITATION ON AMOUNT ELECTED AND APPLICATION OF OTHER SECTIONS.

“(A) The maximum amount of survivor annuities for all surviving spouses and former spouses combined that may be elected by a participant under this section may not exceed the total of the amount that the participant could elect under section 821. The Secretary shall not accept any election under section 821 that would cause this limitation to be exceeded.

“(B) If an election is outstanding under this section at the time a participant retires, the participant may not make an election under subsection 821(f). Receipt by the Secretary of notice of an election under this section during retirement shall void prospectively any election previously made by the participant under subsection 821(f). Recomputation of the participant's annuity resulting from an elec-

tion under this section shall be effective on the first of the month following receipt of a valid notice of such election by the Secretary.

"(C) Subsection 821(1) shall not apply to a survivor annuity for a spouse or former spouse that is elected or limited by this section unless the survivor annuity results from an election dividing a participant's survivor annuity equally among all eligible former spouses and his or her spouse.

"(4) DIVISION AMONG BENEFICIARIES.

"(A) An election under this section may specify that 100 percent or some lesser percentage of the total authorized to be provided under this section is to be divided among a participant's eligible surviving former spouses and any surviving spouse in a designated way. Upon any subsequent marriage or divorce, the participant may elect a survivor annuity for a new spouse or eligible former spouse as a beneficiary of any portion of the maximum survivor benefit not then potentially payable to a previously named beneficiary under this section.

"(B) A participant may also specify that a survivor annuity elected under this section for a beneficiary who dies or otherwise becomes permanently disqualified prior to the participant's retirement, or alternatively, death shall be paid to another beneficiary or beneficiaries named under this section.

"(5) REDUCTION AND RESTORATION OF A PARTICIPANT'S ANNUITY. An election made by a participant prior to retirement to provide a survivor annuity to a former spouse shall commit the participant to the acceptance of a reduction in his or her annuity from its commencing date in the amount required to provide the potential maximum benefit elected. The annuity of a participant making an election under this section shall be reduced in accordance with the applicable formulas in subsections 821(b) and (i) based on the total amount of the survivor annuities potentially payable pursuant to the participant's election(s) under this section. An annuity reduction shall be effective as of the date of commencement of annuity or the date of divorce, if later. Effective on the first of the month following the death or permanent disqualification of any designated beneficiary under this section when the participant has not specified that such a beneficiary's share is to be redistributed among other beneficiaries, or following any other reduction in survivor benefit authorized to be paid to a survivor under this chapter because of a participant's divorce, the participant's annuity shall be recomputed and paid as if the annuity had not been so reduced. No annuity shall be restored under section 821 to its full value unless there is no spouse or former spouse potentially eligible for an annuity upon the participant's death.

"(6) RECALL.—A former spouse shall not be entitled to share in any survivor annuity based on recall service the participant commenced after the divorce unless the recall service lasted five years or longer and the participant's annuity is recomputed as authorized by section 871. In this case, an annuity previously elected for a former spouse shall also be recomputed and adjusted in proportion to the adjustment in the participant's annuity. The reduction in the participant's annuity because of the election for the former spouse shall also be adjusted accordingly. A participant may elect a survivor benefit for a former

spouse who qualifies under this section from whom he or she is divorced during or following the recall service.

"(d) DEATH IN SERVICE.

If a participant who has elected a survivor annuity for a former spouse under this section dies in active service or under conditions required to be treated as a death in active service, the elected survivor annuity shall be paid to the former spouse if then qualified, or if not, when subsequently qualified. If a participant dies leaving one or more former spouses eligible or potentially eligible for a survivor annuity under this section and was married at the time of death to a spouse otherwise eligible for a survivor annuity under section 832, the annuity for such spouse under that section shall be limited to the difference between the amount authorized by that section and the total payable or potentially payable under this section to all former spouses of the deceased participant. In the event a participant dies during recall service, the election to be made under subsection 832(f) may be made separately by each survivor for the share of the annuity or payment to which each is entitled.

"(e) GENERAL RULES FOR PAYMENT.

"(1) The right of a former spouse to have any dispute regarding his or her claim administratively or judicially determined shall be the same as those of the participant or annuitant.

"(2) Upon death of a participant or annuitant, the Secretary shall determine the number of persons, if any, currently or potentially eligible for a survivor annuity elected by the deceased, and the amount of each such annuity. These determinations shall be based upon the terms of the election(s) made by the deceased and any applicable court order(s). Upon determination of the amount of annuity for each eligible person under this paragraph, the payments to each shall be treated as a separate annuity for all purposes, and the death or disqualification of one eligible person shall not operate to increase the annuity or any other person.

"(3) No payment of survivor annuity shall be made under sections 883 or 884 to a surviving former spouse while such former spouse is remarried if the remarriage occurred before the former spouse reached age sixty. Also, unless specifically directed in a court order or provided in a survivor election under these sections, a former spouse may not be given title to a survivor annuity if remarried at the time of retirement, or alternatively, death of the participant. If so directed, the survivor annuity shall only become effective upon dissolution of the remarriage.

"(4) Unless otherwise specified in this chapter, annuities payable under this section to a surviving former spouse shall be calculated, commence, terminate, be reinstated, and adjusted pursuant to sections 821, 832 and 882.

"(5) Any payment under the terms of this chapter to a person bars recovery by any other person and any payment under sections 883 or 884 into the registry of a court or in accordance with a preliminary or final order of a court shall discharge the Secretary and the Government from further liability for such payment.

"(f) APPLICABILITY.

Sections 883 and 884 are applicable only to members of the Foreign Service in active service on or after the date of enactment of this Act.

"SEC. 884. ELECTION OF SPECIAL SURVIVOR ANNUITY.—A participant who has been divorced and who is able to pass a physical examination prescribed by the Secretary may make an election for a special annuity at the time of retirement or, if later, at the time of remarriage of subsequent divorce for a surviving spouse and/or qualified former spouse. The total of all survivor annuities that a participant may elect under this section may not exceed the maximum survivor annuity the participant could elect under section 821 (b) without regard to the limitation in section 883. The annuity of a participant electing a special annuity under this section shall be reduced in accordance with a table prescribed by the Secretary of the Treasury actuarially determined to provide a reduction in the participant's annuity in an amount equivalent to the value of the elected special survivor annuity calculated on the basis of the interest rate used in the most recent valuation of the System. An annuity reduction shall be effective as of the date of commencement of annuity or the date of divorce, if later. Effective on the first of the month following the death or permanent disqualification of any designated beneficiary under this section when the participant has not specified that such a beneficiary's share is to be redistributed among other beneficiaries, the participant's annuity shall be recomputed and paid as if the annuity had not been so reduced. A participant may specify that a survivor annuity elected under this section for a beneficiary who dies or otherwise becomes permanently disqualified prior to the participant's death shall be paid to another beneficiary or beneficiaries named under this section. Annuities elected under this section shall commence, terminate, be discontinued and resumed as prescribed in section 821 for surviving spouses unless otherwise specified by the Secretary by regulation. A special annuity elected under this section shall not be increased under subsection 821(1) irrespective of the amount of the annuity."

EXPLANATION

SUMMARY

This proposal would amend title I of H.R. 4674 "Foreign Service Act of 1979, to add a new section 883 to authorize payments from the Foreign Service Retirement and Disability Fund to surviving former spouses of members of the Foreign Service.

Members would be authorized to elect, or a court could order a survivor annuity for a former spouse who has been married to the member for at least ten years during the latter's employment in the Foreign Service. One reason for imposing this restriction is that the amendment would create a small additional cost to the retirement Fund and this restriction will reduce the cost. A second reason is that the principal justification for this survivor benefit is the limited opportunity Foreign Service spouses have to establish independent careers or to obtain any kind of paid employment while serving abroad with their families. Those who have been married for less than

ten years to a member of the Foreign Service have not been disadvantaged to the same extent as those married for longer periods. Because of these factors, it is believed the Government is justified in imposing this ten-year marriage requirement and the other restrictions in this area of domestic relations normally left to the jurisdiction of state governments and state courts.

Section 883 would limit the total annuities payable to all surviving spouses (including former spouses) of a member to the maximum authorized by current law for the member's surviving spouse. This maximum could be divided in a designated way between all such spouses.

In the event a divorced member remarries and wishes to provide a larger survivor annuity for the second spouse, or for a second former spouse, than could be elected under section 883 because of the maximum limitation, section 884 has been proposed to allow a member to elect a special survivor annuity in the amount designated by the member but which must be fully funded by reductions in the member's annuity actuarially calculated to pay the full cost of the special annuity.

Sections 883 and 884 would apply only to members in active service on the date of enactment.

Further details of the proposed new sections 883 and 884 are contained in the following section-by-section analysis.

ANALYSIS OF PROPOSED SECTION 833—SURVIVOR ANNUITY FOR DIVORCED SPOUSES

Subsection (a)—Definitions

This subsection would define "court", "court order", "divorce", "participant," and "election." As used in this section and section 884, "participant" has the meaning given in section 803 and means an active employee contributing to the Fund, and "former participant" means a retired employee receiving annuity, or a separated employee with title to a deferred annuity.

Subsection (b)—Court orders

Paragraph (b) (1) would authorize a court to order payment of a survivor annuity to an eligible former spouse that this section authorizes a participant to elect for that person. It is intended to give power to a court under this section to order any action, and only such action, with respect to payments from the Foreign Service Retirement and Disability Fund which the section authorizes a member of the Foreign Service to elect. Thus in section 883 and in 884, "election for former spouse" or an equivalent phrase means a voluntary election by a member or an award by a court.

This paragraph would also authorize a court to reduce or cancel an election made by a member for a spouse if this were necessary to permit an election for former spouse in an amount authorized by this section. This would permit a court to make an award for a former spouse under this section, if for any reason such an award is not made at the time of retirement or divorce.

Paragraph (b) (2) specifies that court orders will not be effective until (1) received and determined by the Secretary to be qualified and (2) notice is given to the participant or annuitant. It is contemplated that the Secretary by regulation would provide for granting 30 days notice to an interested party prior to implementation of a qualified court order. This would permit the participant or annuitant to contest the validity of an order and to initiate legal action to have it changed or dismissed.

This paragraph also specifies four basic conditions an order must meet in order for it to be determined qualified for purposes of this section.

Paragraph (b) (3) would make clear that a participant or annuitant must go back to the issuing court if he or she believes a court order is not qualified.

Paragraph (b) (4) would require the Secretary to make information available to any court of competent jurisdiction concerning the extent and amount of entitlement of any Foreign Service participant or annuitant involved in a divorce proceeding. This is intended to facilitate determination by the courts of appropriate amounts to be awarded.

Subsection (c)—Survivor annuities

Paragraph (c) (1) would require that a former spouse have been married to a participant for at least ten years during the latter's employment in the Foreign Service to be eligible for a survivor annuity under sections 883 and 884. Employment in the Foreign Service would include all periods in a personnel category under the Foreign Service of the United States.

Paragraph (c) (2) would authorize a member to elect a survivor annuity for an eligible divorced spouse at the time of the divorce irrespective of whether the divorce occurs before or after retirement, or upon completion of a period of recall service under section 324 of H.R. 4674, on the effective date of the section or when ordered by a court.

Paragraph (c) (3) establishes an overall limitation on the total survivor annuities for a spouse and former spouses combined that may be elected by a participant under this section. The maximum equals 100 percent of the amount that may be elected for a surviving spouse under section 821. Thus, if an annuitant is to provide a survivor annuity for more than one spouse, the existing benefit, which is subsidized by the Fund, must be divided among all beneficiaries.

Paragraph (c) (3) also bars the increase of any survivor annuity elected or limited under this section to the minimum level specified by section 821(1) unless such annuity results from an election under this section dividing the maximum survivor annuity a participant is authorized to elect under section 821(b) equally among all of his or her former spouses and spouse. Subsection 821(1) is designed to insure that the survivor annuity left by low-paid and short-service employees is at least equal to the Social Security minimum survivor annuity. It would not be equitable to allow an annuitant to purposefully elect a very low annuity for a spouse or former spouse in order to benefit by this provision.

Paragraph (c) (4) specifies how elections may be made under this section. It would allow a member to elect a full survivor annuity (100 percent of the maximum allowable) for the former spouse. Alternatively, a member could specify that his or her full survivor annuity be divided equally, or in some specified way among all former spouses and spouse, if any, eligible at the time of his or her death.

If a former spouse remarries before age 60, he or she would not be eligible to receive a survivor benefit under those sections. (This is comparable with the requirement in section 821 to discontinue a survivor annuity to a surviving spouse who remarries before age 60.) However, an annuitant may specify or a court may order that title to a survivor annuity be granted to a former spouse upon the member's death irrespective of remarriage, but provide that payments would commence only should that marriage be subsequently dissolved. When such a provision is included in an election, a former spouse would be potentially qualified for an elected survivor benefit throughout life. If such a provision is not included in a survivor election, a former spouse would be permanently disqualified upon remarriage.

Paragraph (c) (5) would require reduction in a member's annuity for each election made under this section in accordance with the formula in section 821. Once a member's annuity was reduced by 2½ percent of the first \$3,600 specified as the base for a survivor annuity, the balance of the reduction for all survivor annuities elected and potentially payable under this section or section 821 would be at the 10 percent rate. Reduction in a member's annuity would be effective on commencement of the annuity, or date of election if later. If a member has a former spouse at retirement and does not elect a survivor benefit either for the former spouse or a current spouse, a subsequent decision by a court awarding a survivor annuity to the former spouse would require reduction in the member's annuity retroactively to its effective date. If the member elected a survivor annuity for a spouse at retirement, and a court subsequently ordered that the survivor annuity be paid to a former spouse, or split, the member's annuity would not have to be reduced retroactively.

A member's annuity would be restored or partially restored to its full value if one or more persons for whom an election was made under this section became permanently disqualified and no provision was made to redistribute a disqualified survivor's benefit to a qualified survivor.

Paragraph (c) (6) makes necessary provisions in the event a retired member is recalled to active duty in the Service under a little used provision of the Foreign Service Act, section 324 of the proposed Act.

During a period of recall, the member's annuity is discontinued. If the recall period lasts between one and five years, the member is granted a supplemental annuity. If the recall service lasts five years or longer, the member may elect to have his or her annuity computed anew under section 821.

Paragraph (c) (6) would bar a former spouse from receiving a benefit based on recall service of a member that commenced following his or her divorce from the member, since the former spouse would

have no connection with that period of service. The one exception to this rule would occur when there was a recomputation of a member's entire annuity because of the recall service. In this event a survivor annuity previously elected for a former spouse would be adjusted in proportion to the adjustment in the member's annuity.

A qualified former spouse would be entitled under other paragraphs of this section to a benefit based on recall service in the event the divorce occurs during or after the recall service.

Subsection (d)—Death in Service

This subsection would authorize payment of a survivor annuity to a former spouse of a participant who dies in active service (or under conditions treated as a death in service, e.g., selection-out as provided by section 643(b)(2)) if an election or court order is on file providing for such an annuity. Subsection (d) would also limit the survivor annuity payable to any surviving spouse under section 832 to the difference between the amount otherwise authorized by that section and the amount payable to a former spouse under this section.

Subsection (e) General Rules for Payment

Paragraph (e)(1) would give a former spouse the same right to have a claim administratively or judicially determined as is now provided for a participant or other annuitant.

Paragraph (e)(2) would require the Secretary, upon the death of an annuitant or participant, to determine the number of persons eligible or potentially eligible to share in a survivor annuity, and the amount of each share under the terms of the survivor election(s) and any applicable court order(s) on file. If more than one person is eligible to share in the survivor annuity, the amount payable to each would be treated as a separate annuity for all purposes and the amount payable to any one would not be affected by the death or current ineligibility of any other survivor potentially eligible for an annuity.

Paragraph (e)(3) bars payment of survivor annuity to a former spouse during periods of remarriage if the remarriage occurred before age 60, as explained under paragraph (c)(4), above.

Paragraph (e)(4) directs that unless otherwise specified, annuities authorized by this section shall be calculated, commence, terminate, be reinstated and adjusted as are other annuities under this chapter pursuant to the sections enumerated in this paragraph.

Paragraph (e)(5) states that any payment to a person under sections 882 and 884 bars recovery by any other person. It also discharges the Government from any further liability for a payment made into a registry of a court.

Subsection (f)—Applicability

Sections 883 and 884 are applicable only to members in active service on or after the date of enactment of this section.

Analysis of proposed section 884—Election of Special Survivor Annuity

This section would authorize a member who has been divorced to elect a survivor annuity either to supplement or to provide survivor

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annuities authorized to be elected in section 883. The annuity of a member making such an election would be reduced by an amount actuarially calculated to pay the full cost of the annuity elected.

An election could not be made under this section unless the member could pass a physical examination at retirement prescribed by the Secretary. Election under this section could only be made on and after retirement and could not become effective if a member died before retirement.

THE SECRETARY OF STATE,
Washington, April 10, 1980.

The Hon. JAMES M. HANLEY,
Chairman, Committee on Post Office and Civil Services, House of Representatives.

DEAR MR. CHAIRMAN: I was pleased to learn that the Committee has scheduled the deferred markup of the proposed new Foreign Service Action April 23. I wanted you to know of the importance which the President and I attach to the early passage of this new charter for the Foreign Service.

The Foreign Service is confronted by dramatically different and more difficult circumstances than prevailed a third of a century ago when a current Foreign Service Act was passed. The Service must adapt to these new conditions if it is to meet new responsibilities, now and in the years ahead. This bill, I strongly believe, is the instrument which will allow it to do so. In view of the crowded Congressional schedule, I am concerned that any further delay might jeopardize final passage this session, and an important opportunity would be lost.

An enormous effort, beginning more than 3 years ago, has been made to develop this bill, in which I have personally participated extensively. Over the last year, the Congress and in particular members and staff of the Schroeder and Fascell subcommittee have joined in this effort, and have made major contributions to our common goal of placing the Foreign Service on a sound footing for the future, and one which is consistent with the reform of the overall government personnel system in which your Committee played a primary role in 1978.

John White has already written to you about the issue of pay comparability. There are one or two other issues of any significance, reflecting the excellent cooperation between the two subcommittees, and all remaining issues are, I think quite manageable. The full Foreign Affairs Committee made only minor changes in the bill agreed to by the subcommittee, and I hope the same will be possible in the Post Office and Civil Service Committee.

My colleagues and I stand ready to work with you and the members of the Committee on any issues where you would like us to assist. If it would be helpful, I would be pleased to meet with you to discuss the bill prior to the April 23 markup.

Sincerely,

CYRUS VANCE.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman) :

FOREIGN SERVICE ACT OF 1946

[AN ACT To improve, strengthen, and expand the Foreign Service of the United States and to consolidate and revise the laws relating to its administration.

[Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

[TITLE I—SHORT TITLE, OBJECTIVES, AND DEFINITIONS

[PART A—SHORT TITLE

[SEC. 101. Titles I to X, inclusive, of this Act may be cited as the "Foreign Service Act of 1946."

[PART B—OBJECTIVES

[SEC. 111. The Congress hereby declares that the objectives of this Act are to develop and strengthen the Foreign Service of the United States so as—

[(1) to enable the Foreign Service effectively to serve abroad the interests of the United States;

[(2) to insure that the officers and employees of the Foreign Service are broadly representative of the American people and are aware of and fully informed in respect to current trends in American life;

[(3) to enable the Foreign Service adequately to fulfill the functions devolving on it by reason of the transfer to the Department of State of functions heretofore performed by other Government agencies;

[(4) to provide improvements in the recruitment and training of the personnel of the Foreign Service;

[(5) to provide that promotions leading to positions of authority and responsibility shall be on the basis of merit and to insure the selection on an impartial basis of outstanding persons for such positions;

[(6) to provide for the temporary appointment or assignment to the Foreign Service of representative and outstanding citizens of the United States possessing special skills and abilities;

[(7) to provide salaries, allowances, and benefits that will permit the Foreign Service to draw its personnel from all walks of American life and to appoint persons to the highest positions in the Service solely on the basis of their demonstrated ability;

[(8) to provide a flexible and comprehensive framework for the direction of the Foreign Service in accordance with modern practices in public administration; and

[(9) to codify into one Act all provisions of law relating to the administration of the Foreign Service.

[PART C—DEFINITIONS

[SEC. 121. When used in this Act, the term—

[(1) "Service" means the Foreign Service of the United States;

[(2) "Secretary" means the Secretary of State;

[(3) "Department" means the Department of State;

[(4) "Government agency" means any executive department, board, bureau, commission, or other agency in the executive branch of the Federal Government, or any corporation wholly owned (either directly or through one or more corporations) by the United States;

[(5) "Government" means the Government of the United States of America;

[(6) "Continental United States" means the States and the District of Columbia;

[(7) "Abroad" means all areas not included in the continental United States as defined in paragraph (6) of this section;

[(8) "Principal officer" means the officer in charge of an embassy, legation, or other diplomatic mission or of a consulate general, consulate, or vice consulate of the United States; and

[(9) "Chief of mission" means a principal officer appointed by the President, by and with the advice and consent of the Senate, to be in charge of an embassy or legation or other diplomatic mission of the United States, or any person assigned under the terms of this Act to be minister resident, chargé d'affaires, commissioner, diplomatic agent, or the head of a United States office abroad which is designated by the Secretary as having a purpose diplomatic in nature.

[TITLE II—GOVERNING BODIES FOR THE DIRECTION OF THE SERVICE

[PART A—OFFICERS

[DIRECTOR GENERAL

[SEC. 201. The Service shall be administered by a Director General of the Foreign Service, hereinafter referred to as the Director General, who shall be appointed by the Secretary from among Foreign Service officers in the class of career minister or in class 1. Under the general supervision of the Secretary and the Assistant Secretary of the State in charge of the administration of the Department, the Director General shall, in addition to administering the Service and performing the duties specifically vested in him by this or any other Act, coordinate the activities of the Service with the needs of the Department and of other Government agencies and direct the performance by officers and employees of the Service of the duties imposed on them by the terms of any law or by any order or regulation issued pursuant to law or by any international agreement to which the United States is a party.

[PART B—BOARDS

[BOARD OF THE FOREIGN SERVICE

[SEC. 211. (a) The Board of the Foreign Service shall be composed of the Assistant Secretary of State in charge of the administration of the Department, who shall be Chairman; two other Assistant Secretaries of State, designated by the Secretary to serve on the Board; the Director General; and one representative each, occupying positions with comparable responsibilities, from the Departments of Agriculture, Commerce, and Labor, designated, respectively, by the heads of such departments. The Secretary may request the head of any other Government department to designate a representative, occupying a position with comparable responsibilities, to attend meetings of the Board whenever matters affecting the interest of such department are under consideration.

[(b) The Board of the Foreign Service shall make recommendations to the Secretary concerning the functions of the Service; the policies and procedures to govern the selection, assignment, rating, and promotion of Foreign Service Officers; and the policies and procedures to govern the administration and personnel management of the Service; and shall perform such other duties as are vested in it by other sections of this Act or by the terms of any other Act.

[THE BOARD OF EXAMINERS FOR THE FOREIGN SERVICE

[SEC. 212. (a) The Board of Examiners for the Foreign Service shall, in accordance with regulations prescribed by the Secretary and under the general supervision of the Board of the Foreign Service, provide for and supervise the conduct of such examinations as may be given to candidates for appointment as Foreign Service officers in accordance with the provisions of sections 516 and 517 or to any other person to whom an examination for admission to the Service shall be given in accordance with the provisions of this or any other Act or any regulations issued pursuant thereto, and provide for such procedures as may be necessary to determine the loyalty of such persons to the United States and their attachment to the principles of the Constitution.

[(b) The membership of the Board of Examiners for the Foreign Service, not more than half of which shall consist of Foreign Service officers, shall be constituted in accordance with regulations prescribed by the Secretary.

[TITLE III—DUTIES

[PART A—GENERAL DUTIES

**[COMPLIANCE WITH TERMS OF STATUTES, INTERNATIONAL AGREEMENTS
AND EXECUTIVE ORDERS**

[SEC. 301. Officers and employees of the Service shall, under the direction of the Secretary, represent abroad the interests of the United States and shall perform the duties and comply with the obligations resulting from the nature of their appointments or assignments or

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imposed on them by the terms of any law or by any order or regulation issued pursuant to law or by any international agreement to which the United States is a party.

[DUTIES FOR WHICH REGULATIONS MAY BE PRESCRIBED]

[SEC. 302. The Secretary shall, except in an instance where the authority is specifically vested in the President, have authority to prescribe regulations not inconsistent with the Constitution and the laws of the United States in relation to the duties, functions, and obligations of officers and employees of the Service and the administration of the Service.

[DELEGATION OF AUTHORITY TO PRESCRIBE REGULATIONS]

[SEC. 303. In cases where authority to prescribe regulations relating to the Service or the duties and obligations of officers and employees of the Service is specifically vested in the President by the terms of this or any other Act, the President may, nevertheless, authorize the Secretary to prescribe such regulations.

[PART B—SERVICES FOR GOVERNMENT AGENCIES AND OTHER ESTABLISHMENTS OF THE GOVERNMENT]

[SEC. 311. The officers and employees of the Service shall, under such regulations as the President may prescribe, perform duties and functions in behalf of any Government agency or any other establishment of the Government requiring their services, including those in the legislative and judicial branches, but the absence of such regulations shall not preclude officers and employees of the Service from acting for and on behalf of any such Government agency or establishment whenever it shall, through the Department, request their services.

[TITLE IV—CATEGORIES AND SALARIES OF PERSONNEL]

[PART A—CATEGORIES OF PERSONNEL]

[SEC. 401. The personnel of the Service shall consist of the following categories of officers and employees:

[(1) Chiefs of mission, who shall be appointed or assigned in accordance with the provisions of section 501;

[(2) Foreign Service officers, who shall be appointed in accordance with section 511, including those serving as chiefs of mission;

[(3) Foreign Service Reserve officers, who shall be assigned to the Service on a temporary basis from Government agencies or appointed on a temporary basis from outside the Government in accordance with the provisions of section 522, in order to make available to the Service such specialized skills as may from time to time be required;

[(4) Foreign Service staff officers and employees, who shall be appointed in accordance with the provisions of section 531 and who shall include all personnel who are citizens of the United

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States, not comprehended under paragraphs (1), (2), (3), and (6) of this section, and who shall occupy positions with technical, administrative, fiscal, clerical, or custodial responsibilities;

[(5) Alien clerks and employees, who shall be appointed in accordance with the provisions of section 541; and

[(6) Consular agents, who shall be appointed in accordance with the provisions of section 551.

[PART B—SALARIES

[CHIEFS OF MISSION

[SEC. 411. The President shall for salary purposes classify into four classes the positions which are to be occupied by chiefs of mission. The per annum salaries of chiefs of mission within each class shall be at the rate provided by law for the levels of the Federal Executive Salary Schedule as follows: class 1, the rate for level II; class 2, the rate for level III; class 3, the rate for level IV, and class 4, the rate for level V.

[FOREIGN SERVICE OFFICERS

[SEC. 412. There shall be ten classes of Foreign Service officers, including the classes of career ambassador and of career minister. The per annum salary of a career ambassador shall be at the rate provided by law for level IV of the Federal Executive Salary Schedule. The per annum salary of a career minister shall be at the rate provided by law for level V of such schedule. The per annum salaries of Foreign Service officers within each of the other classes shall be as follows:

Class 1.....	\$35,617	\$36,804	\$37,624				
Class 2.....	27,935	28,866	29,797	\$30,728	\$31,659	\$32,590	\$33,521
Class 3.....	22,135	22,873	23,611	24,349	25,087	25,825	26,563
Class 4.....	17,761	18,353	18,945	19,537	20,129	20,721	21,313
Class 5.....	14,432	14,913	15,394	15,875	16,356	16,837	17,318
Class 6.....	11,918	12,315	12,712	13,109	13,506	13,903	14,300
Class 7.....	10,014	10,348	10,682	11,016	11,350	11,684	12,018
Class 8.....	8,582	8,868	9,154	9,440	9,726	10,012	10,298

[SALARIES AT WHICH FOREIGN SERVICE OFFICERS MAY BE APPOINTED

[SEC. 413. A person appointed as a Foreign Service officer shall receive basic salary at one of the rates of the class to which he is appointed which the Secretary shall, taking into consideration his age, qualifications, and experience, determine to be appropriate for him to receive.

[FOREIGN SERVICE RESERVE OFFICERS

[SEC. 414. (a) There shall be eight classes of Foreign Service Reserve officers, referred to hereafter as Reserve officers, which classes shall correspond to classes 1 to 8 of Foreign Service officers.

[(b) A Reserve officer shall receive salary at any one of the rates provided for the class to which he is appointed or assigned in accordance with the provisions of section 523.

[(c) Any person assigned as a Reserve officer from any Government agency shall receive his salary from appropriations provided for the Department during the period of his service as a Reserve officer.

[(FOREIGN SERVICE STAFF OFFICERS AND EMPLOYEES

[SEC. 415. (a) There shall be ten classes of Foreign staff officers and employees, referred to hereafter as staff officers and employees. The per annum salaries of such staff officers and employees within each class shall be as follows:

Class 1	\$22,135	\$22,873	\$23,611	\$24,349	\$25,087	\$25,825	\$26,563	\$27,301	\$28,039	\$28,777
Class 2	17,761	18,353	18,945	19,537	20,129	20,731	21,313	21,905	22,497	23,089
Class 3	14,432	14,913	15,394	15,875	16,356	16,837	17,318	17,799	18,280	18,761
Class 4	11,918	12,315	12,712	13,109	13,506	13,903	14,300	14,697	15,094	15,491
Class 5	10,692	11,048	11,404	11,760	12,116	12,472	12,828	13,184	13,540	13,897
Class 6	9,587	9,907	10,227	10,547	10,867	11,187	11,507	11,827	12,147	12,461
Class 7	8,598	8,885	9,172	9,459	9,746	10,033	10,320	10,607	10,894	11,186
Class 8	7,712	7,969	8,226	8,483	8,740	8,997	9,254	9,511	9,768	10,025
Class 9	6,915	7,146	7,377	7,608	7,839	8,070	8,301	8,532	8,763	8,995
Class 10	6,202	6,409	6,616	6,823	7,030	7,237	7,444	7,651	7,858	8,064

[(b) Notwithstanding the provisions of subsection (a) of this section, the Secretary may, under such regulations as he may prescribe, classify positions at levels below class 10, and establish salary rates therefor at lower rates than those prescribed by this section, for American employes recruited abroad who are not available or are not qualified for transfer to another post and who perform duties of a more routine nature than are generally performed at the class 10 level.

[(SALARIES AT WHICH FOREIGN SERVICE STAFF OFFICERS AND EMPLOYEES MAY BE APPOINTED

[SEC. 416. (a) A person appointed as a staff officer or employee shall receive basic salary at one of the rates of the class to which he is appointed with the Secretary shall, taking into account his qualifications and experience and the needs of the Service, determine to be appropriate for him to receive.

[(b) Whenever the Secretary determines that the needs of the Service warrant the appointment of staff officers or employees in a particular occupational group uniformly at a rate above the minimum rate of the applicable class, he may adjust the basic salary of any staff officer or employee in the same class and occupational group who is receiving less than such established rate.

[(SALARIES OF ALIEN CLERKS AND EMPLOYEES

[SEC. 417. The salary or compensation of an alien clerk or employee shall be fixed by the Secretary in accordance with such regulations as he shall prescribe and, as soon as practicable, in accordance with the provisions of section 444. The salary or compensation of an alien clerk or employee fixed on a per annum basis may, notwithstanding the provisions of any other law, be payable on a weekly or biweekly

basis. When a one- or two-week pay period of such a clerk or employee begins in one fiscal year and ends in another, the gross amount of the earnings for such pay period may be regarded as a charge against the appropriation or allotment current at the end of such pay period.

[SALARIES OF CONSULAR AGENTS

[SEC. 418. The salary or compensation of a consular agent shall be fixed by the Secretary in accordance with such regulations as he shall prescribe and, as soon as practicable, in accordance with the provisions of section 445.

[PART C—SALARIES OF OFFICERS TEMPORARILY IN CHARGE

[AS CHARGÉ D'AFFAIRES AD INTERIM

[SEC. 421. For such time as any Foreign Service officer shall be authorized to act as chargé d'affaires ad interim at the post to which he is assigned, he shall receive, in addition to his basic salary as Foreign Service officer, compensation equal to that portion of the difference between such salary and the basic salary provided for the chief of mission as the Secretary may determine to be appropriate.

[AS OFFICERS IN CHARGE OF CONSULATES GENERAL OR CONSULATES

[SEC. 422. For such time as any Foreign Service officer or any consul or vice consul who is not a Foreign Service officer is temporarily in charge of a consulate general or consulate during the absence or incapacity of the principal officer, he shall receive, in addition to his basic salary as Foreign Service officer or consul or vice consul, compensation equal to that portion which the Secretary shall determine to be appropriate of the difference between such salary and the basic salary provided for the principal officer, or, if there be none, of the former principal officer.

[PART D—TIME OF RECEIVING SALARY

[CHIEFS OF MISSION

[SEC. 431. (a) Under such regulations as the Secretary may prescribe, a chief of mission may be entitled to receive salary from the effective date of his appointment to the date marking his return to his place of residence at the conclusion of the period of his official service as chief of mission or upon termination of his service in accordance with the provisions of paragraph (b) of this section, but no chief of mission shall be entitled to receive salary while absent from his post whenever the Secretary shall find that such absence was without authorization or justification. If a chief of mission in one position is appointed as chief of mission in another position, he shall be entitled to receive the salary pertaining to the new position commencing on the effective date of the new appointment.

[(b) The official services of a chief of mission shall not be deemed terminated by the appointment of a successor but shall continue until

he has relinquished charge of the mission and for such additional period as may be determined by the Secretary, but in no case shall such additional period exceed fifty days including time spent in transit. During such period the Secretary may require him to render such services as he may deem necessary in the interest of the Government.

[(c) During the service of a Foreign Service officer or Reserve officer as chief of mission he shall receive, in addition to his salary as Foreign Service officer or Reserve officer, compensation equal to the difference, if any, between such salary and the salary of the position to which he is appointed or assigned.

[OTHER OFFICERS AND EMPLOYEES

[SEC. 432. (a) Under such regulations as the Secretary may prescribe, any officer or employee appointed to the Service may be entitled to receive salary from the effective date of his appointment to the date when he shall have returned to his place of residence at the conclusion of the period of his official service, or the termination of time spent on authorized leave, whichever shall be later, but no such officer or employee shall be entitled to receive salary while absent from his post whenever the Secretary shall find that such absence was without authorization or justification.

[(b) A Foreign Service officer, appointed during a recess of the Senate, shall be paid salary from the effective date of his appointment until the end of the next session of the Senate, if he has not theretofore been confirmed by the Senate, or until his rejection by the Senate before the end of its next session.

[(c) A Foreign Service officer promoted to a higher class shall receive salary at the rate prescribed in section 412 for the class to which he is promoted from the effective date of his appointment to such class. A Foreign Service officer promoted to a higher class during a recess of the Senate shall receive salary at the rate prescribed for the class to which he is promoted from the effective date of his appointment to such class until the end of the next session. If the Senate should reject or fail to confirm the promotion of such an officer during the session following the date of his promotion, the Foreign Service officer shall, unless he has become liable to separation in accordance with the provisions of sections 633, be automatically reinstated in the class from which he was promoted and receive the salary he was receiving prior to his promotion, such reinstatement to be effective, in the event of rejection of the nomination, from the date of rejection; and in the event of the failure of the Senate to act on the nomination during the session following a promotion, from the termination of that session.

[PART E—CLASSIFICATION

[CLASSIFICATION OF POSITIONS IN THE FOREIGN SERVICE AND IN THE DEPARTMENT

[SEC. 441. (a) Under such regulations as he may prescribe, and in order to facilitate effective management, the Secretary shall classify all positions in the Service at posts abroad, excluding positions to be

occupied by chiefs of mission, and in the case of those occupied by Foreign Service officers, Reserve officers, and staff officers and employees, he shall establish such positions in relation to the classes established by sections 412, 414, and 415, respectively. Positions occupied by alien employees and consular agents, respectively, shall be allocated to such classes as the Secretary may establish by regulation.

[(b) Under such regulations as he may prescribe, the Secretary may, notwithstanding the provisions of the Classification Act of 1949, as amended (5 U.S.C. 5101 and the following), classify positions in or under the Department which he designates as Foreign Service Officer positions to be occupied by officers and employees of the Service, and establish such positions in relation to the classes established by sections 412, 414, and 415.

[LOCAL COMPENSATION PLANS

[Sec. 444. (a) (1) The Secretary shall, in accordance with such regulations as he may prescribe, establish compensation plans for alien employees of the Service and for United States citizens employed by the Department abroad who are family members of Government personnel serving in the same country. Such compensation plans shall be based upon prevailing wages rates and compensation practices for corresponding types of positions in the locality, to the extent consistent with the public interest. Compensation plans established pursuant to this section may include provision for leave of absence with pay for alien employees in accordance with prevailing law and employment practices in the locality of employment, without regard to section 6310 of title 5, United States Code.

[(2) The Secretary may, under such regulations as he may prescribe, make supplemental payments, out of funds appropriated after the date of enactment of this subparagraph for salaries and expenses, to any civil service annuitant who is a former alien employee of the Service (or in a survivor of a former alien employee of the Service) in order to offset exchange rate losses, if the annuity being paid such annuitant is based on (A) a salary that was fixed in a foreign currency that has appreciated in value in terms of the United States dollar, and (B) service in a country in which (as determined by the Secretary) the average retirement benefits being received by those who have retired from competitive local organizations are superior to the local currency value of civil service annuities plus any other retirement benefits payable to alien employees who have retired during similar time periods and after comparable careers with the United States Government.

[(b) For the purpose of performing functions abroad, other Government agencies and any other establishments of the Government, including those in the legislative and judicial branches, are authorized to administer employment programs for aliens, and for family members of Government personnel serving abroad, in accordance with the applicable provisions of this Act and such regulations as the Secretary may provide.

[(c) (1) The head of any agency of the United States, including any agency of the legislative or judicial branch of the United States,

may compensate any current or former alien employee, including an alien employee who worked under a personal services contract, who is or has been imprisoned by a foreign government if the Secretary of State (or, in the case of an alien employee of the Central Intelligence Agency, the Director of Central Intelligence) determines that such imprisonment is the result of the alien's employment by the United States. Such compensation may not exceed an amount that such agency head determines approximates the salary and other benefits to which such employee or former employee would have been entitled had he or she remained employed during the period of such imprisonment, and may be paid under such terms and conditions as the Secretary of State deems appropriate. For purposes of making payments authorized by this subsection, the head of any such agency shall have the same powers with respect to imprisoned alien employees and such former employees as any head of an agency under the provisions of subchapter VII of chapter 55 of title 5, United States Code, to the extent that such powers are consistent with this paragraph. Any period of imprisonment of an alien which is compensable under this subsection shall be considered for purposes of any other employee benefit to be a period of employment by the United States Government, except that a period of imprisonment shall not be creditable—

[(A) for purposes of subchapter III of chapter 83 of title 5, United States Code, unless the individual either—

[(i) was subject to section 8334(a) of such title during the period of his or her Government employment last preceding the imprisonment; or

[(ii) qualifies for annuity benefits under such subchapter III by reason of other service; or

[(B) for purposes of subchapter I of chapter 81 of title 5, United States Code, unless the individual was employed by the United States Government at the time of his or her imprisonment.

[(2) No compensation or other benefit shall be awarded under paragraph (1) unless a claim therefor is filed within three years after—

[(A) the date of the enactment of this subsection;

[(B) the termination of the period of imprisonment giving rise to the claim; or

[(C) the date of the claimant's first opportunity to file such a claim, as determined by the appropriate agency head; whichever is later.

[(3) The Secretary of State may prescribe regulations governing payments under this subsection for the guidance of all agencies.

[(d) The Secretary of State shall prescribe regulations authorizing the employment abroad, and providing for the compensation, of family members of Government personnel.

[(CLASSIFICATION OF CONSULAR AGENTS

[(SEC. 445. Upon the basis of the classification provided for in section 441, the Secretary shall, with the advice of the Board of the Foreign Service, from time to time prepare schedules of salaries for classes of positions of consular agents, which classes shall be established by regulation, and shall allocate all such positions to the appropriate classes.

[EXEMPTION FROM THE APPLICATION OF THE CLASSIFICATION ACT

[SEC. 446. Title II of the Act of November 26, 1940, entitled "An Act extending the classified executive Civil Service of the United States" (54 Stat. 1212; 5 U.S.C. 681), is hereby further amended by deleting paragraph (vii) of section 3(d) and by substituting in lieu of the present language of paragraph (vi) of section 3(d) the following language: "Officers or positions of officers and employees of the Foreign Service."

[PART F—ADDITIONAL COMPENSATION

[SPECIAL ALLOWANCES

[SEC. 451. If he finds it to be in the best interests of the Service, the Secretary may, under such conditions as he may determine, pay special allowances, in addition to compensation otherwise authorized, to Foreign Service officers who are required because of the nature of their assignments to perform additional work on a regular basis in substantial excess of normal requirements.

[TITLE V—APPOINTMENTS AND ASSIGNMENTS

[PART A—PRINCIPAL DIPLOMATIC REPRESENTATIVES

[POLICY

[SEC. 500. It is the policy of the Congress that chiefs of mission and Foreign Service officers appointed or assigned to serve the United States in foreign countries shall have, to the maximum practicable extent, among their qualifications, a useful knowledge of the principal language or dialect of the country in which they are to serve, and knowledge and understanding of the history, the culture, the economic and political institutions, and the interests of such country and its people.

[APPOINTMENTS

[SEC. 501. (a) The President shall, by and with the advice and consent of the Senate, appoint ambassadors and ministers, including career ambassadors and career ministers.

[(b) The President may, in his discretion, assign any Foreign Service officer to serve as minister resident, charge d'affaires, commissioner, or diplomatic agent for such period as the public interest may require.

[(c) On and after the date of enactment of the Foreign Relations Authorization Act of 1972, no person shall be designated as ambassador or minister, or be designated to serve in any position with the title of ambassador or minister, unless that person is appointed as an ambassador or minister in accordance with subsection (a) of this section or clause 3, section 2, of article II of the Constitution, relating to recess appointments, except that the personal rank of ambassador or minister may be conferred by the President in connection with special missions for the President of an essentially limited and temporary nature of not exceeding six months if the President, before conferring such rank, reports in writing to the Committee on Foreign Relations of the Senate his intent to confer such rank and transmits therewith

all materials relating to any potential conflicts of interest relevant to such person.

[LISTS OF FOREIGN SERVICE OFFICERS QUALIFIED TO BE CAREER MINISTERS OR CHIEFS OF MISSION TO BE FURNISHED TO THE PRESIDENT]

[SEC. 502. (a) The Secretary shall, on the basis of recommendations made by the Board of the Foreign Service, from time to time furnish the President with the names of Foreign Service officers qualified for appointment to the class of career ambassador and class of career minister together with pertinent information about such officers, but no person shall be appointed into the class of career minister who has not been appointed to serve as a chief of mission or appointed or assigned to serve in a position which, in the opinion of the Secretary, is of comparable importance. A list of such positions shall from time to time be published by the Secretary. No person shall be appointed into the class of career ambassador who has not (1) served for at least fifteen years in a position of responsibility in a Government agency, or agencies, including at least three years as a career minister; (2) rendered exceptionally distinguished service to the Government; and (3) met such other requirements as the Secretary shall prescribe.

[(b) The Secretary shall also, on the basis of recommendations made by the Board of the Foreign Service, from time to time furnish the President with the names of Foreign Service officers qualified for appointment or assignment as chief of mission, together with pertinent information about such officers, in order to assist the President in selecting qualified candidates for appointment or assignment in such capacity.

[PART B—FOREIGN SERVICE OFFICERS]

[APPOINTMENTS]

[SEC. 511. The President shall appoint Foreign Service officers by and with the advice and consent of the Senate. All appointments of Foreign Service officers shall be by appointment to a class and not to a particular post.

[COMMISSIONS]

[SEC. 512. Foreign Service officers may be commissioned as diplomatic or consular officers or both and all official acts of such officers while serving under diplomatic or consular commissions shall be performed under their respective commissions as diplomatic or consular officers.

[LIMITS OF CONSULAR DISTRICTS]

[SEC. 513. The Secretary shall define the limits of consular districts.

[ASSIGNMENTS AND TRANSFERS]

[SEC. 514. A Foreign Service officer, commissioned as a diplomatic or consular officer, may be assigned by the Secretary to serve in any diplomatic position other than that of chief of mission or in any con-

sular position, and he may also be assigned to serve in any other capacity in which he is eligible to serve under the terms of this or any other Act. He may be transferred from one post to another by order of the Secretary as the interests of the Service may require.

[CITIZENSHIP REQUIREMENTS

[Sec. 515. No person shall be eligible for appointment as a Foreign Service officer unless he is a citizen of the United States.

[ADMISSION TO CLASS 6, 7, OR 8

[Sec. 516. (a) No person shall be eligible for appointment as a Foreign Service officer of class 8 unless he has passed such written, oral, physical, and other examinations as the Board of Examiners for the Foreign Service may prescribe to determine his fitness and aptitude for the work of the Service and has demonstrated his loyalty to the Government of the United States and his attachment to the principles of the Constitution. The Secretary may furnish the President with the names of those persons who have passed such examinations and are eligible for appointment as Foreign Service officers of class 8.

[(b) The Secretary may furnish the President with the names of those persons who have passed such examinations and are eligible for appointment as Foreign Service officers of class 8, whom he recommends for appointment directly to class 7 when, in his opinion, their age, experience, or other qualifications make such an appointment appropriate.

[(c) Foreign Service officer candidates who have passed examinations described in subsection (a) may be appointed by the Secretary, under such regulations as he may prescribe, for a trial period of service as Foreign Service Reserve officers of class 7 or 8. Such appointments shall be limited to a maximum of 48 months, but may be extended for up to 12 additional months if the Secretary deems such extension to be in the public interest. Such Reserve officers may receive promotions up to class 6 for satisfactory performance during such trial period. The Secretary shall furnish the President with the names of such Reserve officers who have demonstrated fitness and aptitude for the work of the Service and whom he recommends for appointment as Foreign Service officers in the class corresponding to their Reserve officer class. The Secretary may terminate the services of such Reserve officers at any time under section 638.

[ADMISSION TO CLASSES 1 TO 7, INCLUSIVE

[Sec. 517. A person who has not been appointed as a Foreign Service officer in accordance with section 516 of this Act shall not be eligible for appointment as a Foreign Service officer of classes 1 to 7, inclusive, unless he has passed comprehensive mental and physical examinations prescribed by the Board of Examiners for the Foreign Service to determine his fitness and aptitude for the work of the Service; demonstrated his loyalty to the Government of the United States and his attachment to the principles of the Constitution; and rendered at least four years of actual service prior to appointment in a position of re-

sponsibility in the service of a Government agency, or agencies, except that, if he has reached the age of thirty-one years, the requirement as to service may be reduced to three years. The Secretary shall furnish the President with the names of those persons who shall have passed such examinations and are eligible for appointment as Foreign Service officers of classes 1 to 7, inclusive. The Secretary shall, taking into consideration the age, qualifications, and experience of each candidate for appointment, recommend the class to which he shall be appointed in accordance with the provisions of this section.

[ADMISSION TO THE CLASS OF CAREER MINISTER

[SEC. 518. No person shall be eligible for appointment to the class of career ambassador or career minister who is not a Foreign Service officer.

**[REASSIGNMENT TO FOREIGN SERVICE OF FORMER AMBASSADORS
AND MINISTERS**

[SEC. 519. If, within three months of the date of the termination of his services as chief of mission and of any period of authorized leave, a Foreign Service officer, or a Foreign Service Reserve officer who is a participant in the Foreign Service Retirement and Disability System, has not again been appointed or assigned as chief of mission or assigned to another position in accordance with this or any other Act, he shall be retired from the Service and receive retirement benefits in accordance with the provisions of section 821.

[REAPPOINTMENT AND RECALL

[SEC. 520. (a) The President may, by and with the advice and consent of the Senate, reappoint to the Service, a former Foreign Service officer who has been separated from the Service. The Secretary shall, taking into consideration the qualifications and experience of each candidate for reappointment and the rank of his contemporaries in the Service, recommend the class to which he shall be reappointed in accordance with the provisions of this section.

[(b) Whenever the Secretary determines it to be in the public interest, any retired officer or employee of the Service may be recalled for active duty on a temporary or limited basis to any appropriate class in his or her former category, except that a retired Foreign Service officer may not be recalled to a class higher than he or she held at the time of retirement unless appointed to the higher class by the President by and with the advice and consent of the Senate.

[PART C—FOREIGN SERVICE RESERVE OFFICERS

[ESTABLISHMENT OF RESERVE

[SEC. 521. In accordance with the terms of this Act and under such regulations as the Secretary shall prescribe, there shall be organized and maintained a Foreign Service Reserve, referred to hereafter as the Reserve.

[APPOINTMENTS AND ASSIGNMENTS TO THE RESERVE]

[SEC. 522. Whenever the services of a person who is a citizen of the United States are required by the Service, the Secretary may—

[(1) appoint as a Reserve officer for nonconsecutive periods of not more than five years each, a person not in the employ of the Government whom the Board of the Foreign Service shall deem to have outstanding qualifications;

[(2) assign as a Reserve officer for nonconsecutive periods of not more than five years each a person regularly employed in any Government agency, subject, in the case of an employee of a Government agency other than the Department of State, to the consent of the head of the agency concerned; and

[(3) extend the appointment or assignment of any Reserve officer, or continue the services of any such Reserve officer by reappointment without regard to the provisions of section 527 of this Act, for not more than five additional years if the Secretary deems it to be in the public interest to continue such officer in the Service, except that the assignment of any Reserve officer under paragraph (2) above may not be extended under the provisions of this paragraph without the consent of the head of the agency concerned; except that the authority contained in this paragraph relating to extending the appointment of any Reserve officer, and to continuing the services of any such Reserve officer by reappointment, shall not be applicable to the Department of State and the International Communication Agency.

[APPOINTMENT OR ASSIGNMENT TO A CLASS]

[SEC. 523. A Reserve officer, appointed or assigned to active duty, shall be appointed or assigned to a class and not to a particular post, and such an officer may be assigned to posts and may be transferred from one post to another by order of the Secretary as the interests of the Service may require. The class to which he shall be appointed or assigned shall depend on his age, qualifications, and experience.

[COMMISSIONS]

[SEC. 524. Whenever the Secretary shall deem it in the interests of the Service that a Reserve officer shall serve in a diplomatic or consular capacity, he may recommend to the President that such officer be commissioned as a diplomatic or consular officer or both. The President may, by and with the advice and consent of the Senate, commission such officer as a diplomatic or consular officer or both, and all official acts of such an officer while serving under a diplomatic or consular commission shall be performed under his commission as a diplomatic or consular officer. In all other cases, appropriate rank and status analogous to that of Foreign Service officers engaged in work of comparable importance shall be provided to permit Reserve officers to carry out their duties effectively.

[BENEFITS]

[SEC. 526. A Reserve officer shall, except as otherwise provided in regulations which the Secretary may prescribe, receive all the allowances, privileges, and benefits which Foreign Service officers are entitled to receive in accordance with the provisions of title IX.

[REAPPOINTMENT OR REASSIGNMENT OF RESERVE OFFICERS]

[SEC. 527. A person who has served as a Reserve officer may not be reappointed or reassigned to active duty until the expiration of a period of time equal to his preceding tour of duty or until the expiration of a year, whichever is the shorter.

[REINSTATEMENT OF RESERVE OFFICERS]

[SEC. 528. Upon the termination of the assignment of a Reserve officer assigned from any Government agency, such person shall be entitled to reinstatement in the Government agency by which he is regularly employed in the same position he occupied at the time of assignment, or in a corresponding or higher position. Upon reinstatement he shall receive the within-grade salary advancements he would have been entitled to receive had he remained in the position in which he is regularly employed under the Classification Act of 1949, as amended, or any corresponding provision of law applicable to the position in which he is serving. A certificate of the Secretary that such person has met the standards required for the efficient conduct of the work of the Foreign Service shall satisfy any requirements as to the holding of minimum ratings as a prerequisite to the receipt of such salary advancements.

[PART D—FOREIGN SERVICE STAFF OFFICERS AND EMPLOYEES]

[APPOINTMENTS]

[SEC. 531. The Secretary may, under such regulations as he may prescribe, appoint staff officers and employees on the basis of qualifications and experience. The Secretary may make provisions for temporary, limited, and such other types of appointment as he may deem necessary. He is authorized to establish appropriate probationary periods during which newly appointed staff officers or employees, other than those appointed for temporary or limited services shall be required to serve. The Secretary may terminate at any time, without regard to the provisions of section 637, or the provisions of any other law, the services of staff officers or employees appointed for temporary or limited service and staff officers or employees who have not completed probationary periods, except that if such separation is by reason of misconduct the provisions of section 637 shall be applicable.

[ASSIGNMENTS AND TRANSFERS]

[SEC. 532. Under such regulations as he may prescribe, the Secretary may assign a staff officer or employee to any post or he may assign

him to serve in any position in which he is eligible to serve under the terms of this or any other Act. A staff officer or employee may be transferred from one post to another by order of the Secretary as the interests of the Service may require.

[COMMISSION AS CONSUL OR VICE CONSUL

[SEC. 533. On the recommendation of the Secretary, the President may, by and with the advice and consent of the Senate, commission a staff officer or employee as consul. The Secretary may commission a staff officer or employee as vice consul. Officials acts of staff officers or employees while serving under consular commissions in the Service shall be performed under their respective commissions as consular officers.

[CITIZENSHIP REQUIREMENT

[SEC. 534. No person shall be eligible for appointment as staff officer or employee who is not a citizen of the United States at the time of his appointment.

[PART E—ALIEN CLERKS AND EMPLOYEES

[APPOINTMENTS

[SEC. 541. The Secretary shall appoint alien clerks and employees at posts abroad under such regulations as he may prescribe and, as soon as practicable, in accordance with the provisions of section 444.

[ASSIGNMENTS AND TRANSFERS

[SEC. 542. The Secretary may assign an alien clerk or employee to a position at any post, and any such clerk or employee may be transferred from a position at one post to a position at another as the interests of the Service may require.

[PART F—CONSULAR AGENTS

[SEC. 551. The Secretary may appoint consular agents under such regulations as he may prescribe and, as soon as practicable, in accordance with the provisions of section 445.

[PART G—ASSIGNMENT OF PERSONNEL BY THE WAR AND NAVY DEPARTMENTS

[PART H—ASSIGNMENT OF FOREIGN SERVICE PERSONNEL

[ASSIGNMENTS TO ANY GOVERNMENT AGENCY OR INTERNATIONAL ORGANIZATION

[SEC. 571. Any officers or employee of the Service may, in the discretion of the Secretary, be assigned or detailed for duty in any Government agency, or in any international organization, international commission, or international body, such as assignment or combination of assignments to be for a period of not more than four years, except

that under special circumstances the Secretary may extend this four-year period for not more than four additional years: *Provided*, That in individual cases when personally approved by the Secretary further extension may be made.

[(b) If a Foreign Service officer or Reserve officer shall be appointed by the President, by and with the advice and consent of the Senate, or by the President alone, to a position in any Government agency, any United States delegation or mission to any international organization, in any international commission, or in any international body, the period of his service in such capacity shall be construed as constituting an assignment within the meaning of paragraph (a) of this section and such person shall not, by virtue of the acceptance of such an assignment, lose his status as such an officer. Service in such a position shall not, however, be subject to the limitations concerning the duration of an assignment contained in that paragraph.

[(c) If the basic minimum salary of the position to which an officer or employee of the Service is assigned pursuant to the terms of this section is higher than the salary such officer or employee is entitled to receive as an officer or employee of the Service, such officer or employee shall, during the period such difference in salary exists, receive the salary and allowances of the position in which he is serving in lieu of his salary and allowances as an officer or employee of the Service. Any salary paid under the provisions of this section shall be the salary on the basis of which computations and payments shall be made in accordance with the provisions of title VIII. No officer or employee of the Service who, subsequent to the date of enactment of the Foreign Service Act Amendments of 1960, is assigned to, or who, after June 30, 1961, occupies a position in the Department that is designated as a Foreign Service officer position, shall be entitled to receive a salary differential under the provisions of this paragraph.

[(d) The salary of an officer or employee assigned pursuant to the terms of this section shall be paid from appropriations made available for the payment of salaries of officers and employees of the Service. Such appropriations may be reimbursed, however, when the Secretary enters into reimbursement agreements for all or any part of the salaries of officers or employees assigned to such agencies and payment is received pursuant thereto, or when an officer or employee of the Service is assigned to a position the salary of which is payable from other funds available to the Department.

[COMPULSORY SERVICE OF FOREIGN SERVICE OFFICERS IN THE CONTINENTAL UNITED STATES

[SEC. 572. Every Foreign Service officer shall, during his first fifteen years of service in such capacity, be assigned for duty in the continental United States in accordance with the provisions of section 571 for periods totaling not less than three years.

[ASSIGNMENT FOR CONSULTATION OR INSTRUCTION

[SEC. 573. (a) Any officer or employee of the Service may, in the discretion of the Secretary, be assigned or detailed to any Government agency for consultation or specific instruction either at the commence-

ment, during the course of, or at the close of the period of his official service; and any such detail or assignment, if not more than four months in duration, shall not be considered as an assignment within the meaning of section 571.

[(b) Any officer or employee of the Service may be assigned or detailed for special instruction or training at or with public or private nonprofit institutions; trade, labor, agricultural, or scientific associations, or commercial firms.

[ASSIGNMENT TO TRADE, LABOR, AGRICULTURE, SCIENTIFIC, OR OTHER CONFERENCES

[SEC. 574. An officer or employee of the Service may, in the discretion of the Secretary, be assigned or detailed for duty with domestic or international trade, labor, agricultural, scientific, or other conferences, congresses, or gatherings, including those whose place of meeting is in the continental United States; or for other special duties, including temporary details under commission not at his post or in the Department.

[ASSIGNMENTS TO FOREIGN GOVERNMENTS

[SEC. 575. The Secretary may, in his discretion, assign or detail an officer or employee of the Service for temporary service to or in cooperation with the government of another country in accordance with the appropriate provisions of titles III and IX of Public Law 402, Eightieth Congress (62 Stat. 7 and 13; 22 U.S.C. 1451-1453, 1478 and 1479).

[ASSIGNMENT TO PUBLIC OR PRIVATE NONPROFIT ORGANIZATIONS

[SEC. 576. (a) (1) A substantial number of Foreign Service officers shall, after their seventh year of service (counting service as a Foreign Service officer and prior service as a Foreign Service Reserve officer), be assigned in the United States, or any territory or possession thereof, for significant duty with a State or local government, public school, community college, or other public or private nonprofit organization designated by the Secretary. Such duty may include assignment to a Member or office of the Congress, except that of the total number of officers assigned under this section at any one time, not more than 20 per centum may be assigned to Congress.

[(2) To the extent practical, assignments shall be for at least twelve consecutive months and may be on a reimbursable basis. Any such reimbursements shall be credited to and used by the appropriations made available for the salaries and expenses of officers or employees.

[(b) A Foreign Service officer on assignment under this section shall be deemed to be on detail to a regular work assignment in the Service, and the officer remains an employee of the Department while so assigned. Reimbursement for an assignment to a Member or office of the Senate shall be made at the rate of one-half of the current salary of the Foreign Service officer (who shall continue to be paid his or her full salary by the Department of State).

[(c) Any period of time that a Foreign Service officer serves on an assignment under this section shall also be considered as a period of time that the officer was assigned for duty in the continental United States for purposes of section 572 of this Act.

[(d) For purposes of this section—

[(1) "State" means—

[(A) a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and a territory or possession of the United States; and

[(B) an instrumentality or authority of a State or States as defined in subparagraph (A) of this paragraph (1) and a Federal-State authority or instrumentality; and

[(2) "local government" means—

[(A) any political subdivision, instrumentality, or authority of a State or States as defined in subparagraph (A) of paragraph (1); and

[(B) any general or special purpose agency of such a political subdivision, instrumentality, or authority.

[(e) Not later than six months after the date of enactment of this subsection, the Secretary shall transmit a report to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate describing the steps he has taken to carry out the provisions of this section; and he shall transmit such reports annually thereafter.

[(f) The Secretary may reimburse a Foreign Service Officer for relocation expenses incident to household moves necessitated by an assignment under this section for which the officer is not entitled to be reimbursed under any other provision of law. For purposes of such reimbursement, regulations issued pursuant to section 5724a(a)(3) of title 5, United States Code, shall apply to the same extent as if the officer were entitled to be reimbursed for travel and transportation expenses under section 5724(a) of that title.

[FOREIGN LANGUAGE KNOWLEDGE PREREQUISITE TO ASSIGNMENT

[SEC. 578. The Secretary shall designate every Foreign Service officer position in a foreign country whose incumbent should have a useful knowledge of a language or dialect common to such country. After December 31, 1963, each position so designated shall be filled only by an incumbent having such knowledge: *Provided*, That the Secretary or Deputy Under Secretary for Administration may make exceptions to this requirement for individuals or when special or emergency conditions exist. The Secretary shall establish foreign language standards for assignment abroad of officers and employees of the Service, and shall arrange for appropriate language training of such officers and employees at the Foreign Service Institute or elsewhere.

[TITLE VI—PERSONNEL ADMINISTRATION

[PART A—DEFINITIONS

[SEC. 601. For the purposes of this title—

[(1) "Efficiency record" is the term which describes those materials considered by the Director General to be pertinent to the prepara-

tion of an evaluation of the performance of an officer or employee of the Service.

[(2) "Efficiency report" is the term which designates the analysis of the performance of an officer or employee made by his supervising officer or by a Foreign Service inspector in accordance with such regulations as may be prescribed by the Secretary.

[PART B—EFFICIENCY RECORDS

**[RESPONSIBILITY OF THE DIRECTOR GENERAL FOR THE KEEPING OF
EFFICIENCY RECORDS**

[SEC. 611. The Director General acting under the general direction of the Board of the Foreign Service, shall be responsible for the keeping of accurate and impartial efficiency records. Under his direction there shall be assembled, recorded, and preserved all available information in regard to the character, ability, conduct, quality of work, industry, experience, dependability, and general usefulness of all officers and employees of the Service including the reports of Foreign Service inspectors and the efficiency reports of supervising officers. The Director General shall undertake such statistical and other analyses as may be necessary to develop the validity and reliability of efficiency reporting forms and procedures.

[TO WHOM RECORDS SHALL BE AVAILABLE

[SEC. 612. The correspondence and records of the Department relating to the officers and employees of the Service, including efficiency records as defined in section 601(1) but not including records pertaining to the receipt, disbursement, and accounting for public funds, shall be confidential and subject to inspection only by the President, the Secretary, the Under Secretary, the Counselor of the Department, the legislative and appropriations committees of the Congress charged with considering legislation and appropriations for the Service or representatives duly authorized by such committees, the members of the Board of the Foreign Service, the Director General, and such officers and employees of the Government as may be assigned by the Secretary to work on such records. Under such regulations as the Secretary may prescribe and in the interest of efficient personnel administration, the whole or any portion of an efficiency record shall, upon written request, be divulged to the officer or employee to whom such record relates.

**[PART C—PROMOTION OF FOREIGN SERVICE OFFICERS AND FOREIGN
SERVICE RESERVE OFFICERS**

[PROMOTION OF FOREIGN OFFICERS BY SELECTION

[SEC. 621. All promotions of Foreign Service officers shall be made by the President, in accordance with such regulations as he may prescribe, by appointment to a higher class, by and with the advice and consent of the Senate. Promotion shall be by selection on the basis of merit. The affidavit requirements of sections 3332 and 3333(a) of

title 5 of the United States Code shall not apply with respect to a Foreign Service officer who has complied with such requirements and who is subsequently promoted by appointment to a higher class without a break in service.

[ELIGIBILITY]

[SEC. 622. The Secretary shall, by regulation, determine the minimum period Foreign Service officers must serve in each class and a standard for performance for each class which they must meet in order to become eligible for promotion to a higher class. In the event the Director General shall certify to the Board of the Foreign Service that a Foreign Service officer has rendered extraordinarily meritorious service, the Board of the Foreign Service may recommend to the Secretary that such officer shall not be required to serve such minimum period in class as a prerequisite to promotion, and the Secretary may exempt such officer from such requirement.

[RECOMMENDATIONS FOR PROMOTIONS]

[SEC. 623. (a) The Secretary shall establish, with the advice of the Board of the Foreign Service, selection boards to evaluate the performance of Foreign Service officers; and upon the basis of their findings, which, except for career ambassadors and career ministers, shall be submitted to the Secretary in rank order by class or in rank order by specialization within a class, the Secretary shall make recommendations in accordance with the findings to the President for the promotion of Foreign Service officers. No person assigned to serve on any such board shall serve in such capacity for any two consecutive years. In special circumstances, however, which shall be set forth by regulations, the Secretary shall have the authority to remove individual names from the rank order list submitted by the selection boards or to delay the inclusion of individual names until a subsequent list of nominations is transmitted to the President.

[(b) The Secretary may, pursuant to a recommendation of a duly constituted grievance board or panel or an equal employment opportunity appeals examiner—

[(1) recommend to the President the promotion of a Foreign Service officer;

[(2) promote Foreign Service Staff personnel and Foreign Service Reserve officers with limited or unlimited tenure; and

[(3) grant to Foreign Service personnel additional step increases in salary, within the salary range established for the class in which an officer or employee is serving.

[(c) The Secretary may, in special circumstances which shall be set forth in regulations, make retroactive promotions and additional increases in salary within class made or granted under the authority of this section.

[PROMOTION OF FOREIGN SERVICE RESERVE OFFICERS]

[SEC. 624. Any Reserve officer may receive promotions from one class to a next higher class in accordance with regulations prescribed by the Secretary.

**[WITHIN-CLASS SALARY INCREASES OF FOREIGN SERVICE OFFICERS AND
RESERVE OFFICERS]**

[SEC. 625. (a) Any Foreign Service Officer or any Reserve officer, whose services meet the standards required for the efficient conduct of the work of the Service and who shall have been in a given class for a continuous period of nine months or more, shall, on the first day of the first pay period that begins on or after July 1 each year, receive an increase in salary to the next higher rate for the class in which such officer is serving. Credit toward such nine-month period may be granted to an officer in accordance with such regulations as the Secretary may prescribe for any civilian service of such officer with the Government or with the government of the District of Columbia which was performed subsequent to any break in service in excess of three calendar days and subsequent to the officer's last equivalent increase in pay. As used in this subsection, the term "equivalent increase in pay" means—

[(1) any increase in basic salary resulting from—

[(A) a grade or class promotion,

[(B) a regularly scheduled within-grade or within-class step increase, or

[(C) a salary adjustment or combination of adjustments—

[(i) made since the last equivalent increase in pay,

[(ii) resulting from conversion from one pay system to another, and

[(iii) equal to or greater than the amount of the within-class increase for the class to which the officer was appointed; or

[(2) such other increases in salary as the Secretary may by regulation designate; but does not include any general increase in salary granted by law or any within-grade or within-class increase in salary awarded for meritorious performance.

[(b) Without regard to any other law, the Secretary is authorized to grant to any Foreign Service officer or any Reserve officer additional increases in salary, within the salary range established for the class in which such officer is serving, based upon especially meritorious service.

**[RELATIONSHIP BETWEEN PROMOTIONS AND FUNCTIONAL AND
GEOGRAPHIC AREA SPECIALIZATION]**

[SEC. 626. The achievement of the objective of this Act requires increasing numbers of Foreign Service officers to acquire functional and geographic area specializations and to pursue such specializations for a substantial part of their careers. Such specialization shall not in any way inhibit or prejudice the orderly advancement through class 1 of any such officer in the Foreign Service.

**[PART D—SEPARATION OF OFFICERS AND EMPLOYEES FROM THE
SERVICE]**

[FOREIGN SERVICE OFFICERS WHO ARE CAREER AMBASSADORS]

[SEC. 631. Any Foreign Service officer who is a career ambassador, other than one occupying a position as chief of mission or any other

position to which appointed by the President, by and with the advice and consent of the Senate, shall be retired from the Service at the end of the month in which the officer reaches age sixty-five and receive retirement benefits in accordance with the provisions of section 821, but whenever the Secretary shall determine it to be in the public interest, such an officer may be retained on active service for a period not to exceed five years. Any such officer who completes a period of authorized service after reaching age sixty-five shall be retired at the end of the month in which such service is completed.

[PARTICIPANTS IN THE FOREIGN SERVICE RETIREMENT AND DISABILITY SYSTEM WHO ARE NOT CAREER AMBASSADORS]

[SEC. 632. Any participant in the Foreign Service Retirement and Disability System, other than one occupying a position as chief of mission or any other position to which appointed by the President, by and with the advice and consent of the Senate, who is not a career ambassador shall be retired from the Service at the end of the month in which the participant reaches age sixty and receive retirement benefits in accordance with the provisions of section 821, but whenever the Secretary shall determine it to be in the public interest, such a participant may be retained on active service for a period not to exceed five years. Any such participant who completes a period of authorized service after reaching age sixty shall be retired at the end of the month in which such service is completed.

[SELECTION-OUT]

[SEC. 633. (a) The Secretary shall prescribe regulations concerning—

[(1) the maximum period during which any Foreign Service officer below the class of career minister shall be permitted to remain in class without promotion; and

[(2) the standard of performance which any such officer must maintain to remain in the Service.

[(b) Any Foreign Service officer below the class of career minister who does not receive a promotion to a higher class within the specified period or who fails to meet the standard of performance required of officers of his class shall be retired from the Service and receive benefits in accordance with the provisions of section 634.

[SELECTION-OUT BENEFITS]

[SEC. 634. (a) Any Foreign Service officer in classes 1, 2, or 3 who is retired from the Service in accordance with the provisions of section 633 shall receive retirement benefits in accordance with the provisions of section 821.

[(b) Any Foreign Service officer in classes 4, 5, 6, or 7 who is retired from Service in accordance with the provisions of section 633 shall receive—

[(1) one-twelfth of a year's salary at his then current salary rate for each year of service and proportionately for a fraction of a year, but not exceeding a total of one year's salary at his then

current salary rate, payable without interest, from the Foreign Service Retirement and Disability Fund, in three equal installments on the 1st day of January following the officer's retirement and on the two anniversaries of this date immediately following: *Provided*, That in special cases, the Secretary may in his discretion accelerate or combine the installments; and

[(2) a refund of the contributions made to the Foreign Service Retirement and Disability Fund as provided in section 841, except that in lieu of such refund such officer, if he has at least five years of service credit toward retirement under the Foreign Service Retirement and Disability System, excluding military or naval service, may elect to receive retirement benefits on reaching the age of sixty in accordance with the provisions of section 821. In the event that an officer who was separated from class 4 or 5 and who has elected to receive retirement benefits dies before reaching the age of sixty, his death shall be considered a death in service within the meaning of section 832. In the event that an officer who was separated from class 6 or 7 and who has elected to receive retirement benefits dies before reaching the age of sixty, the total amount of his contributions made to the Foreign Service Retirement and Disability Fund shall be paid in accordance with the provisions of section 841.

[(c) Notwithstanding the provisions of section 3477 of the Revised Statutes as amended (31 U.S.C. 203) or the provisions of any other law, a Foreign Service officer who is retired in accordance with the provisions of section 633 shall have the right to assign to any person or corporation the whole or any part of the benefits receivable by him pursuant to paragraph (b) (1) of this section. Any such assignment shall be on a form approved by the Secretary of the Treasury and a copy thereof shall be deposited with the Secretary of the Treasury by the officer executing the assignment.

[FOREIGN SERVICE OFFICERS RETIRED FROM CLASS 7 OR 8

[SEC. 635. Any Foreign Service officer in class 7 who is appointed under the provisions of section 516(b) and any Foreign Service officer in class 8 shall occupy probationary status. The Secretary may terminate his service at any time.

[VOLUNTARY RETIREMENT

[SEC. 636. Any participant in the Foreign Service Retirement and Disability System who is at least fifty years of age and has rendered twenty years of service, including service within the meaning of section 853, may on his own application and with the consent of the Secretary be retired from the Service and receive benefits in accordance with the provisions of section 821.

[SEPARATION FOR CAUSE

[SEC. 637. (a) The Secretary may, under such regulations as he may prescribe, separate from the Service any Foreign Service officer,

Reserve officer, or staff officer or employee, on account of the unsatisfactory performance of his duties, or for such other cause as will promote the efficiency of the Service, with reasons given in writing, but no such officer or employee shall be so separated until he shall have been granted a hearing by the Board of the Foreign Service and the unsatisfactory performance of his duties, or other cause for separation, shall have been established at such hearing, unless he shall have waived in writing his right to a hearing. The provisions of this section shall not apply to Foreign Service officers of class 8 or any other officer or employee of the Service who is in a probationary status or whose appointment is limited or temporary, except when separation is by reason of misconduct.

[(b) Any participant in the Foreign Service Retirement and Disability System separated under the provisions of paragraph (a) of this section shall receive a refund of the contributions made to the Foreign Service Retirement and Disability Fund, as provided in section 841 except that in lieu of such refund such officer may (except in cases where the Secretary determines that separation was based in whole or in part on the ground of disloyalty to the United States) if he has at least five years of service credit toward retirement under this System, excluding military or naval service, elect to leave his contributions in the Fund and receive an annuity, computed as prescribed in section 821 commencing at the age of sixty years.

[(c) Any officer or employee of the Service separated under the provisions of paragraph (a) of this section who is not a participant in the Foreign Service Retirement and Disability System shall be entitled only to such benefit as shall accrue to him under the retirement system in which he is a participant.

[(d) Any payments made in accordance with the provisions of paragraph (b) of this section shall be made out of the Foreign Service Retirement and Disability Fund.

**[TERMINATION OF LIMITED APPOINTMENTS OF FOREIGN SERVICE
RESERVE OFFICERS AND STAFF OFFICERS AND EMPLOYEES**

[SEC. 638. Notwithstanding the provisions of this or any other law, the Secretary may, under such regulations as he may prescribe, terminate at any time the services of any Reserve officer or staff officer or employee serving under limited appointment, except that, if the termination is because of misconduct, the provisions of section 637 shall be applicable.

[FACILITATING VOLUNTARY RETIREMENTS

[SEC. 639. In order to facilitate their transition from the Service, the Secretary may provide professional career counseling, advice, and placement assistance, by contract or otherwise (subject to the availability of appropriations), to officers and employees of the Service, other than those separated for cause.

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[PART E—PROMOTION OF FOREIGN SERVICE STAFF OFFICERS AND EMPLOYEES

[CLASS PROMOTION OF STAFF PERSONNEL

[SEC. 641. All promotions of staff officers and employees to a higher class shall be made at a higher salary on the basis of performance and merit in accordance with such regulations as the Secretary may prescribe.

[WITHIN-CLASS SALARY INCREASES

[SEC. 642. Under such regulations as the Secretary may prescribe, any staff officer or employee whose services meet the standards required for the efficient conduct of the work of the Service shall receive an increase in salary at periodic intervals to the next higher salary rate for the class in which he is serving. Without regard to any other law the Secretary is authorized to grant any such officer or employee additional increases in salary within the salary range established for the class in which he is serving, based upon specifically meritorious service.

[PART F—SEPARATION OF STAFF OFFICERS AND EMPLOYEES

[FOR UNSATISFACTORY PERFORMANCE OF DUTY

[SEC. 651. The Secretary may, under such regulations as he may prescribe, separate from the Service any staff officer or employee on account of the unsatisfactory performance of his duties, but no such officer or employee shall be so separated from the Service until he shall have been granted a hearing by the Board of the Foreign Service and the unsatisfactory performance of his duties shall have been established at such hearing.

[FOR MISCONDUCT OR MALFEASANCE

[SEC. 652. The Secretary shall separate from the Service any staff officer or employee who shall be guilty of misconduct or malfeasance in office, but no such officer or employee shall be so separated from the Service until he shall have been granted a hearing by the Board of the Foreign Service and his misconduct or malfeasance shall have been established at such hearing.

[PART G—PROMOTION AND SEPARATION OF ALIEN CLERKS AND EMPLOYEES

[PROMOTION

[SEC. 661. Alien clerks and employees shall receive promotions from one class to a higher class and in-class promotions in accordance with regulations prescribed by the Secretary.

[FOR UNSATISFACTORY PERFORMANCE OF DUTY

[SEC. 662. The Secretary may, under such regulations as he may prescribe, separate from the Service any alien clerk or employee on account of the unsatisfactory performance of his duties.

[SEPARATION FOR MISCONDUCT OR MALFEASANCE]

[SEC. 663. The Secretary shall separate from the Service any alien clerk or employee who shall be found guilty of misconduct or malfeasance.

[PART H—SEPARATION OF CONSULAR AGENTS]

[SEC. 671. The Secretary may, under such regulations as he may prescribe, separate any consular agent from the Service on account of—

- [(a)** the unsatisfactory performance of his duties; or
- [(b)** misconduct or malfeasance.

[PART I—INSPECTION]

[SEC. 681. The Secretary shall assign or detail Foreign Service Officers as Foreign Service inspectors to inspect in a substantially uniform manner and at least once every two years the work of the diplomatic and consular establishments of the United States. Whenever the Secretary has reason to believe that the business of a consulate is not being properly conducted and that it is necessary in the public interest, he may authorize any Foreign Service inspector to suspend the principal officer or any subordinate consular officer and to administer the office in the place of the principal officer for a period not exceeding ninety days. The Secretary may also authorize a Foreign Service inspector to suspend any diplomatic officer except a chief of mission. A Foreign Service inspector shall have the authority to suspend any other officer or employee of the Service.

[PART J—FOREIGN SERVICE GRIEVANCES]

[STATEMENT OF PURPOSE]

[SEC. 691. It is the purpose of this part to provide officers and employees of the Service and their survivors a grievance procedure to insure a full measure of due process, and to provide for the just consideration and resolution of grievances of such officers, employees, and survivors.

[REGULATIONS OF THE SECRETARY]

[SEC. 692. The Secretary shall, consistent with the purposes stated in section 691 of this Act, implement this part by promulgating regulations, and revising those regulations when necessary, to provide for the consideration and resolution of grievances by a board. No such regulation promulgated by the Secretary shall in any manner alter or abridge the provisions of due process established by this section for grievants. The regulations shall include, but not be limited to, the following:

[(1) Procedures for the resolution of grievances in accordance with the purposes of this part shall be established by agreement between the Secretary and the organization accorded recognition as the exclusive representative of the officers and employees of the Service. If a

grievance is not otherwise resolved under agency procedures within ninety days of presentation, a grievant shall be entitled to file a grievance with the board for its consideration and resolution. For the purposes of the regulations—

[(A) "grievant" shall mean any officer or employee of the Service who is a citizen of the United States; or for purposes of subparagraphs (C) and (D), a former officer or employee of the Service; or in the case of death of the officer or employee, a surviving spouse or dependent family member of the officer or employee;

[(B) "grievance" shall mean any act or condition subject to the control of the Department of State, United States Information Agency, or the Agency for International Development (hereafter in this part referred to as the foreign affairs agencies, or agencies) which is alleged to deprive the grievant of a right or benefit authorized by law or regulation, or is otherwise a source of concern or dissatisfaction to the grievant; and grievances shall include but not be limited to complaints against separation of an officer or employee allegedly contrary to law or regulation or predicated upon alleged inaccuracy (including inaccuracy resulting from omission of any relevant and material document) or falsely prejudicial character of any part of the grievant's official personnel record; other alleged violation, misinterpretation, or misapplication of applicable law, regulation, or published policy affecting the terms and conditions of the grievant's employment or career status; allegedly wrongful disciplinary action against an employee constituting a reprimand or suspension from official duties; dissatisfaction with any matter subject to the control of the agency with respect to the grievant's physical working environment; alleged inaccuracy, error, or falsely prejudicial material in the grievant's official personnel file; and action alleged to be in the nature of reprisal for an employee's participation in grievance procedures; but grievances shall not include complaints against individual assignments or transfers of Foreign Service officers or employees which are ordered in accordance with law and regulation, judgments of Selection Boards pursuant to section 623 or of equivalent bodies in ranking Foreign Service officers and employees for promotion on the basis of merit or judgments in examinations prescribed by the Board of Examiners pursuant to section 516 or 517, termination of time limited appointments pursuant to section 638 and the pertinent regulations prescribed by the employing agency, or any complaints or appeals where a specific statutory appeal procedure exists (other matters not specified in this paragraph may be excluded as grievances only by written agreement of the agencies and the exclusive representative organization);

[(C) except as provided in paragraph (D) when the grievant is a former officer or employee or a surviving spouse or dependent family member of a former officer or employee, "grievance" shall mean a complaint that an allowance or other financial benefit has been denied arbitrarily, capriciously, or contrary to applicable law or regulation;

[(D) when the grievant is a former officer who was involuntarily retired pursuant to sections 633 and 634 of this Act within six years prior to the enactment of this part, "grievance" shall mean a complaint that such involuntary retirement violated applicable law or regulation effective at the time of the retirement or that the involuntary retirement was predicated directly upon material contained in the grievant's official personnel file alleged to be erroneous or falsely prejudicial in character; and

[(E) "party" shall mean the grievant or the foreign affairs agency having control over the act or condition forming the subject matter of the grievance.

[(2) (A) The board considering and resolving grievances shall be composed of independent, distinguished citizens of the United States, well-known for their integrity, who are not active officers, employees or consultants of the foreign affairs agencies (except as members of the Grievance Board established under 3 Foreign Affairs Manual 660) but may be retired officers or employees. The board shall consist of not less than five members including a Chairman. Membership of the board, selection of the Chairman, and terms of the service of the members shall be determined by the foreign affairs agencies and the organization accorded recognition as the exclusive representative of the officers or employees of the Service in accordance with procedures agreed pursuant to paragraph (1). If the agencies and organization do not agree on membership of the board prior to the effective date of this part, the members shall be chosen by elimination, in equal numbers from a list submitted by the agencies and a list submitted by the organization, and the Chairman shall be chosen, by alternate striking by the agencies and the organization, from a separate list obtained from the Federal Mediation and Conciliation Service. Unless otherwise agreed upon, the term of service shall be two years, renewable. All members of the board shall act as impartial individuals in considering grievances. The board may act by or through panels or individual members designated by the Chairman, except that hearings within the continental United States shall be held by panels of at least three members unless the parties agree otherwise. Members including the Chairman who are not employees of the Federal Government shall receive compensation for each day they are performing their duties as members of the board (including traveltime) at the daily rate paid an individual at GS-18 of the General Schedule under section 5332 of title 5 of the United States Code.

[(B) In accordance with this part, the board may adopt regulations concerning the organization of the board and such regulations as may be necessary to govern its proceedings. The board may obtain facilities, services and supplies through the general administrative services of the Department of State. All expenses of the board shall be paid out of the funds appropriated to the Department for obligation and expenditure by the board. At the request of the board, officers and employees on the rolls of the foreign affairs agencies may be assigned as staff employees for the board. Within the limit of appropriated funds, the board may appoint and fix the compensation of such other employees as the board considers necessary to carry out its functions. The officers and employees so appointed or assigned shall be respon-

sible solely to the board and the board shall prepare the performance evaluation reports for such officers and employees. The records of the board shall be maintained by the board and shall be separate from all other records of the foreign affairs agencies.

[(3) A grievance under such regulations is forever barred, and the board shall not consider or resolve the grievance, unless the grievance is presented within a period of three years after the occurrence or occurrences giving rise to the grievance, except that if the grievance arose earlier than two years prior to the date the regulations are first promulgated or placed into effect, the grievance shall be so barred, and not so considered and resolved, unless it is presented within a period of two years after the effective date of the regulations. There shall be excluded from the computation of any such period any time during which the grievant was unaware of the grounds which are the basis of the grievance and could not have discovered such grounds if he or she had exercised, as determined by the board, reasonable diligence.

[(4) The board shall conduct a hearing, at the request of a grievant, in any case which involves disciplinary action or a grievant's retirement from the Service under section 633 of this Act or which in the judgment of the board can best be resolved by a hearing or by presentation of oral argument. The grievant, a reasonable number of representatives of the grievant's own choosing, and a reasonable number of representatives of the foreign affairs agency concerned are entitled to be present at the hearing. The board may, after considering the views of the parties and any other individuals connected with the grievance, decide that a hearing should be open to others. Testimony at a hearing shall be given by oath or affirmation, which any board member or person designated by the board shall have authority to administer (and this paragraph so authorizes). Each party (A) shall be entitled to examine and cross-examine witnesses at the hearing or by deposition, and (B) shall be entitled to serve interrogatories upon another party and have such interrogatories answered by the other party unless the board finds such interrogatory irrelevant or immaterial. Upon request of the board, or upon a request of the grievant deemed relevant and material by the board, the foreign affairs agencies shall promptly make available at the hearing or by deposition any witness under the control, supervision, or responsibility of the foreign affairs agencies, except that if the board determines that the presence of such witness at the hearing is required for just resolution of the grievance, then the witness shall be made available at the hearing.

[(5) Any grievant filing a grievance, and any witness or other person involved in a proceeding under the regulations adopted pursuant to paragraph (1), shall be free from any restraint, interference, coercion, harassment, discrimination, or reprisal in those proceedings or by virtue of them. The grievant has the right to a representative of his own choosing at every stage of the proceedings. The grievant and his representatives who are under the control, supervision, or responsibility of the foreign affairs agencies shall be granted reasonable periods of administrative leave to prepare, to be present, and to present the grievance of such grievant. Any witness under the control, supervision, or responsibility of the foreign affairs agencies shall be granted reasonable periods of administrative leave to appear and testify at any such proceeding.

[(6) In considering the validity of a grievance, the board (except as provided in paragraph (8)) shall have access, to the extent permitted by laws, to any agency record considered by the board to be relevant to the grievant and the subject matter of the grievance.

[(7) The agency shall, subject to applicable law, promptly furnish the grievant any agency record which the grievant requests to substantiate his grievance and which the board determines is relevant and material to the proceeding. When deemed appropriate by the board, a grievant may be supplied with only a summary or extract of classified material.

[(8) Notwithstanding paragraphs (6) and (7), nothing in this Act shall be construed to require the disclosure of any official agency record to the board or a grievant where the head of agency or his deputy determines in writing that such disclosure would adversely affect the foreign policy or national security of the United States.

[(9) The agencies shall use their best endeavors to expedite security clearances whenever necessary to insure a fair and prompt investigation and hearing.

[(10) During any hearings held by the board, any oral or documentary evidence may be received but the board shall exclude any irrelevant, immaterial, or unduly repetitious evidence as determined under section 556 of title 5 of the United States Code. A verbatim transcript shall be made of any hearing and shall be part of the record of proceedings. In those grievances in which the board holds no hearing, the board shall offer to each party the opportunity to review and to supplement, by written submissions, the record of proceedings prior to its decision. The board decision shall be based exclusively on the record of proceedings.

[(11) If the board determines that the agency is considering any action of the character of separation or termination of the grievant, disciplinary action against the grievant, or recovery from the grievant of alleged overpayment of salary, expenses, or allowances, which is related to a grievance pending before the board, and that such action should be suspended, the agency shall suspend such action until the board has ruled upon such grievance. Other matters not specified in this paragraph may be made subject to suspension of action by the procedures established by agreement under paragraph (1). Notwithstanding such suspension of action, the head of the agency concerned or a chief of mission or principal officer may exclude an officer or employee from official premises or from the performance of specified duties when determined in writing to be essential to the functioning of the post or office to which the employee is assigned.

[(12) Upon completion of the hearing or the compilation of such record as the board may find appropriate in the absence of a hearing, the board shall expeditiously decide the grievance on the basis of the record of proceedings. In each case the decision of the board shall be in writing, shall include findings of fact, and shall include the reasons for the board's decision. The grievant shall have access to the record of proceedings including the decision.

[(13) If the board finds that the grievance is meritorious, the board shall have authority, within the limitations of the authority of the head of the agency, to direct the agency (A) to correct any official per-

sonnel record relating to the grievant which the board finds to be inaccurate or falsely prejudicial; (B) to reverse an administrative decision denying the grievant compensation or any other prerequisite of employment authorized by law or regulation when the board finds that such denial was arbitrary, capricious, or contrary to law or regulation; (C) to retain in service an employee whose termination would be in consequence of the matter by which the employee is aggrieved; (D) to reinstate with back pay, under applicable law and regulations, an employee where it is clearly established that the separation or suspension without pay of the employee was unjustified or unwarranted; and (E) to take such other remedial action as may be provided in the procedures agreed pursuant to paragraph (1). Such orders of the board shall be final, subject to judicial review as provided in section 694, except that reinstatement of former officers who have filed grievances under paragraph (1) (D) shall be presented as board recommendations, the decision on which shall be subject to the sole discretion of the agency head or his designee who shall take into account the needs of the Service in deciding on such recommendations, and shall not be reviewable under section 694.

[(14) If the board finds that the grievance is meritorious and that remedial action should be taken that directly relates to promotion or assignment of the grievant or to other remedial action not provided in paragraph (13), or if the board finds that the evidence before it warrants disciplinary action against any officer or employee, it shall make an appropriate recommendation to the head of the agency, and forward to the head of the agency the record of the board's proceedings including the transcript of the hearing if any. The head of the agency (or his designee, who shall not have direct responsibility for administrative management) shall make a written decision on the board's recommendation. A recommendation of the board may be rejected in part or in toto if the action recommended would be contrary to law, would adversely affect the foreign policy or security of the United States, or would substantially impair the efficiency of the Service. If the decision rejects the recommendation in part or in toto, the decision shall state specifically any and all reasons for such action. Pending the decision, there shall be no ex parte communication concerning the grievance between the agency head (or his designee) and any person involved in the grievance proceeding.

[(15) The board shall have authority to insure that no copy of the determination of the agency head or his designee to reject a board recommendation, no notation of the failure of the board to find for the grievant, and no notation that a proceeding is pending or has been held, shall be entered in the personnel records of the grievant (unless by order of the grievance board as a remedy for the grievance) or any other officer or employee connected with the grievance. Nothing contained herein shall prevent the agency from maintaining grievance records under appropriate safeguards to preserve confidentiality.

[(16) A grievant whose grievance is found not to be meritorious by the board may obtain reconsideration by the board only upon presenting newly discovered or previously unavailable material evidence not previously considered by the board and then only upon approval of the board.

[RELATIONSHIP TO OTHER REMEDIES]

[SEC. 693. (a)] A grievant may not file a grievance under this part if he has formally requested, prior to filing a grievance, that the matter or matters which are the basis of the grievance be considered or resolved, and relief provided, under a provision of law, regulation, or Executive order (other than under this part) and the matter has been carried to final decision thereunder on its merits or is still under consideration.

[(b)] If a grievant is not prohibited from filing a grievance under this part by subsection (a), he may file a grievance within the jurisdiction of the board under this part notwithstanding the fact that such grievance may be eligible for consideration, resolution, and relief under a regulation or Executive order other than under this part, but such election of remedies shall be final upon the acceptance of jurisdiction by the board.

[JUDICIAL REVIEW]

[SEC. 694.] Notwithstanding any other provision of law, any aggrieved party may obtain judicial review of regulations promulgated by the Secretary under section 692 of this Act, revisions of such regulations, and final actions of the agency head or the board pursuant to such section, in the District Courts of the United States, in accordance with the standards set forth in chapter 7 of title 5 of the United States Code. Section 706 of title 5 shall apply without limitation or exception.

[TITLE VII—THE FOREIGN SERVICE INSTITUTE]

[ESTABLISHMENT OF THE INSTITUTE]

[SEC. 701.] The Secretary shall, in order to furnish training and instruction to officers and employees of the Service and of the Department and to other officers and employees of the Government for whom training and instruction in the field of foreign relations is necessary, and in order to promote and foster programs of study incidental to such training, establish a Foreign Service Institute, hereinafter called the Institute. The Secretary may also provide appropriate orientation and language training to members of family of officers and employees of the Government in anticipation of the assignment abroad of such officers and employees or while abroad. Other agencies of the Government shall wherever practicable avoid duplicating the facilities of the Institute and the training provided by the Secretary at the Institute or elsewhere.

[THE DIRECTOR OF THE INSTITUTE—APPOINTMENT, SALARY, AND DUTIES]

[SEC. 702.] The head of the Institute, who shall be known as its Director, shall be appointed by the Secretary. The Director shall, under the general supervision of the Director General and under such regulations as the Secretary may prescribe, establish the basic procedures to be followed by the Institute; plan and provide for the general nature of the training and instruction to be furnished at the

Institute; correlate the training and instruction to be furnished at the Institute with the training activities of the Department and other Government agencies and with courses given at private institutions that are designed or may serve to furnish training and instruction to officers and employees of the Service; encourage and foster such programs outside of the Institute as will be complementary to those of the Institute; and take such other action as may be required for the proper administration of the Institute.

[AID TO NONPROFIT INSTITUTIONS]

[SEC. 703. The Secretary may, within the limits of such appropriations as may be made specifically therefor, make grants or furnish such other gratuitous assistance as he may deem necessary or advisable to nonprofit institutions cooperating with the Institute in any of the programs conducted by the Director by authority of this title.

[APPOINTMENT, ASSIGNMENT, AND DETAIL TO THE INSTITUTE]

[SEC. 704. (a) The Secretary may appoint to the faculty or staff of the Institute on a full- or part-time basis such personnel as he may deem necessary to carry out the provisions of this title in accordance with the provisions of the civil service laws and regulations and the Classification Act of 1949, as amended, except that, when deemed necessary by the Secretary for the effective administration of this title, personnel may be appointed without regard to such laws and regulations, but any person so appointed shall receive a salary at one of the rates provided by the Classification Act of 1949, as amended. All appointments to the faculty or staff of the Institute shall be made without regard to political affiliations and shall be made solely on the basis of demonstrated interest in, and capacity to promote, the purposes of the Institute.

[(b) The Secretary may, under such regulations as he may prescribe and on a full- or part-time basis, assign or detail officers and employees of the Service to serve on the faculty or staff of the Institute or to receive training at the Institute.

[(c) The Secretary may, under such regulations as he may prescribe and on a full- or part-time basis, assign or detail any officer or employee of the Department, and, with the consent of the head of the Government agency concerned, any other officer or employee of the Government, to serve on the faculty or staff of the Institute, or to receive training. During the period of his assignment or detail, such officer or employee shall be considered as remaining in the position from which assigned.

[(d) It shall be the duty of the Director to make recommendations to the Secretary with regard to the appointment, assignment, or detail of persons to serve on the faculty or staff of the Institute, and the Secretary shall in each case take such recommendations into consideration in making such appointments, assignments, or details.

[(e) The Secretary may, under such regulations as he may prescribe, in the absence of suitably qualified United States citizens, employ persons who are not citizens of the United States by appointment

to the staff of the Institute either on a full- or part-time basis or by contract for services in the United States or abroad at rates not in excess of those provided by the Classification Act of 1949, as amended (5 U.S.C. 5101).

[(f) The Secretary may, under such regulations as he may prescribe, provide special monetary or other incentives not inconsistent with this Act to encourage Foreign Service personnel to acquire or retain proficiency in esoteric foreign languages or special abilities needed in the Service.

[INSTRUCTION AND EDUCATION AT LOCALITIES OTHER THAN THE INSTITUTE

[SEC. 705. The Secretary may, under such regulations as he may prescribe, pay the tuition and other expenses, of officers and employees of the Service, assigned or detailed in accordance with the provisions of section 573(b) for special instruction or training at or with public or private nonprofit institutions, trade, labor, agricultural, or scientific associations, or commercial firms.

[ENDOWMENTS AND GIFTS TO THE INSTITUTE

[SEC. 706. The Secretary may accept, receive, hold, and administer gifts, bequests, or devises of money, securities, or property made for the benefit of, or in connection with, the Foreign Service Institute in accordance with part C of title X.

[ACQUISITION OF REAL PROPERTY

[SEC. 707. The Secretary may, in the name of the United States, acquire such real property as may be necessary for the operation and maintenance of the Institute and, without regard to section 3709 of the Revised Statutes, such other property and equipment as may be necessary for its operation and maintenance.

[ORIENTATION AND LANGUAGE TRAINING FOR FAMILY MEMBERS

[SEC. 708. (a) To facilitate orientation and language training provided to members of families of officers and employees of the Government pursuant to section 701, the Secretary may make grants to family members attending language and orientation programs of study of the Institute. No such grant may exceed the amount actually expended for necessary costs incurred in conjunction with such attendance, and in no event may any such grant exceed \$300 per month per individual. No individual may receive such a grant for more than six months in connection with any one assignment.

[(b) If a member of the family of an officer or employee of the Government who is assigned abroad is unable to participate in language training provided by the Department at the Institute or elsewhere, the Secretary may partially compensate that family member for language training, related to the assignment abroad, which is undertaken at a public or private institution.

**【TITLE VIII—THE FOREIGN SERVICE RETIREMENT AND
DISABILITY SYSTEM**

【PART A—ESTABLISHMENT OF SYSTEM

【RULES AND REGULATIONS

【SEC. 801. (a) The President may prescribe rules and regulations for the maintenance of a Foreign Service Retirement and Disability System, originally established by section 18 of the Act of May 24, 1924 (43 Stat. 144), referred to hereafter as the System.

【(b) The Secretary shall administer the System in accordance with such rules and regulations and with the principles established by this Act.

【MAINTENANCE OF FUND

【SEC. 802. The Secretary of the Treasury shall maintain the special fund, known as the Foreign Service Retirement and Disability Fund, referred to hereafter as the Fund, originally constituted by section 18 of the Act of May 24, 1924 (43 Stat. 144).

【PARTICIPANTS

【SEC. 803. (a) The following persons, hereafter referred to as participants, shall be entitled to the benefits of the System:

【(1) All Foreign Service officers;

【(2) All other persons making contributions to the Fund on the effective date of this Act;

【(3) Any chief of mission who is not otherwise entitled to be a participant and who fulfills the conditions of paragraph (b) of this section;

【(4) All Foreign Service staff officers and employees appointed by the Secretary of State or the Director of the International Communication Agency with unlimited appointments.

【(b) A person to become a participant in accordance with the provisions of paragraph (a) (3) of this section must—

【(1) have served as chief of mission for an aggregate period of twenty years or more, exclusive of extra service credit in accordance with the provisions of section 853; and

【(2) have paid into the Fund a special contribution for each year of such service in accordance with the provisions of section 811.

【DEFINITIONS

【SEC. 804. When used in this title unless otherwise specified, the term—

【(1) “Annuitant” means any person including a former participant or survivor who meets all requirements for an annuity from the Fund under the provisions of this or any other Act and who has filed claim therefor.

【(2) “Surviving spouse” means the surviving wife or husband of a participant or annuitant who, in the case of a death in Service or marriage after retirement, was married to the participant or

annuitant for at least two years¹ immediately preceding his or her death or is the parent of a child born of the marriage.

[(3) "Child", except in section 841, means an unmarried child, under the age of eighteen years, or such unmarried child regardless of age who because of physical or mental disability incurred before age eighteen is incapable of self-support. In addition to the offspring of the participant, such term includes (A) an adopted child, (B) a stepchild or recognized natural child who received more than one-half support from the participant, and (C) a child who lived with and for whom a petition of adoption was filed by a participant, and who is adopted by the surviving spouse of the participant after the latter's death. Such term also includes an unmarried student below the age of twenty-two years. For this purpose a child whose twenty-second birthday occurs before July 1 or after August 31 of a calendar year, and while a student is deemed to have become twenty-two years of age on the first day of July after that birthday.

[(4) "Student" means a child regularly pursuing a full-time course of study or training in residence in a high school, trade school, technical or vocational institute, junior college, college, university, or comparable recognized educational institution. A child who is a student shall not be deemed to have ceased to be a student during any interim between school years, semesters, or terms if the interim or other period of nonattendance does not exceed five calendar months and if the child shows to the satisfaction of the Secretary that he or she has a bona fide intention of continuing to pursue such course during the school year, semester, or term immediately following the interim.

[(5) "Military and naval service" means honorable active service—

[(A) in the Armed Forces of the United States;

[(B) in the Regular or Reserve Corps of the Public Health Service after June 30, 1960; or

[(C) as a commissioned officer of the National Oceanic and Atmospheric Administration or predecessor organization after June 30, 1961;

but does not include service in the National Guard except when ordered to active duty in the service of the United States.

[(6) "Foreign Service normal cost" means the level percentage of payroll required to be deposited in the Fund to meet the cost of benefits payable under the System (computed in accordance with generally accepted actuarial practice on an entry-age basis) less the value of retirement benefits earned under another retirement system for Government employees and less the cost of credit allowed for military service.

[(7) "Fund balance" means the sum of—

[(A) the investments of the Fund calculated at par value; and

[(B) the cash balance of the Fund on the books of the Treasury.

¹ See footnote 2 on page 186.

[(8) "Unfounded liability" means the estimated excess of the present value of all benefits payable from the Fund over the sum of—

[(A) the present value of deductions to be withheld from the future basic salary of participants and of future agency contributions to be made in their behalf; plus

[(B) the present value of Government payments to the Fund under section 865 of this title; plus

[(C) the Fund balance as of the date the unfunded liability is determined.

[(9) "Price index" means the Consumer Price Index (all items—United States city average) published monthly by the Bureau of Labor Statistics.

[AUTHORITY TO MAINTAIN EXISTING AREAS OF CONFORMITY BETWEEN CIVIL SERVICE AND FOREIGN SERVICE RETIREMENT SYSTEMS

[SEC. 805. (a) In order to maintain existing conformity between the Civil Service Retirement and Disability System and the Foreign Service Retirement and Disability System, whenever (subsequent to January 1, 1974) a law is enacted which affects a provision of general applicability in the Civil Service Retirement and Disability System (subchapter III, chapter 83, title 5, United States Code) or otherwise affects current or former participants, annuitants, or survivors under that System which, immediately prior to the enactment of such law, had been substantially identical to a corresponding provision of law affecting participants, former participants, annuitants, or survivors under the Foreign Service Retirement and Disability System, such new provision of law shall be deemed to extend to the latter System so that it applies in like manner with respect to such Foreign Service Retirement and Disability System participants, former participants, annuitants, or survivors. The President is authorized by Executive order to prescribe regulations to implement this section and to make such extension retroactive to a date no earlier than the effective date of such provision for the Civil Service Retirement and Disability System.²

²On Jan. 7, 1977, the President exercised his authority under this section by issuing Executive Order 11952 (42 F.R. 2293). Such Executive Order was revoked by Executive Order 12145 of July 18, 1979 (44 F.R. 42653) after being incorporated into the new Executive Order. Executive Order 12145 extended the following provisions of laws to the Foreign Service Retirement and Disability System:

- (1) Public Law 93-260, approved April 9, 1974 (88 Stat. 76).
- (2) Public Law 93-273, approved April 26, 1974 (88 Stat. 93).
- (3) Public Law 94-166, approved December 23, 1975 (89 Stat. 1002).
- (4) Public Law 95-317, approved July 10, 1978 (92 Stat. 385).
- (5) Public Law 95-366, approved September 15, 1978 (92 Stat. 600).
- (6) Public Law 95-382, approved September 22, 1978 (92 Stat. 727).

The text of the Foreign Service Act of 1946 shown in brackets incorporates the conforming changes described in Executive Order 12145, the text of which is as follows:

Executive Order 12145 of July 18, 1979

FOREIGN SERVICE RETIREMENT AND DISABILITY SYSTEM

By the authority vested in me as President by the Constitution and statutes of the United States of America, including Section 805 of the Foreign Service Act of 1946, as added by Section 503 of Public Law 94-350 (90 Stat. 835; 22 U.S.C. 1065), in order to conform the Foreign Service Retirement and Disability System to certain amendments to the Civil Service Retirement and Disability System, it is hereby ordered as follows:

1-101. (a) The enactment (after January 1, 1974) of certain laws has affected a number of provisions of general applicability in the Civil Service Retirement and Disability System (subchapter III, Chapter 83 of Title 5 of the United States Code (or otherwise affected

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current or former participants, annuitants, or survivors under that System, which, immediately prior to the enactment of such laws, had been substantially identical to corresponding provisions of law affecting participants, former participants, annuitants or survivors under the Foreign Service Retirement and Disability System. Those laws are set forth at Annex I, attached hereto and made a part hereof.

(b) The provisions of the laws referred to in subsection (a) above are extended, as provided by Section 805 of the Foreign Service Act of 1946, as amended (22 U.S.C. 1065), to the Foreign Service Retirement and Disability System in accordance with the provisions of this Order, which provisions shall modify, supersede, or render inapplicable all inconsistent prior provisions of law.

1-102. In accord with Section 1 of Public Law 93-260, Section 804(2) of the Foreign Service Act of 1946, as amended (22 U.S.C. 1064(2)), is deemed to be amended by striking out "two years" wherever it appears and inserting in lieu thereof "one year". This amendment shall apply only in the cases of participants, former participants, or annuitants who died on or after April 9, 1974 but no annuity shall be paid or recomputed, by virtue of this amendment, for any period prior to May 1, 1974.

1-103. In accord with Section 1(b) of Public Law 95-382, Section 811 of the Foreign Service Act of 1946, as amended (22 U.S.C. 1071), shall be deemed to be amended to provide that, "No contribution shall be required for any period for which credit is allowed to persons of Japanese ancestry for being interned or otherwise detained during World War II, as described in Section 1(a) of Public Law 95-382."

1-104. In accord with Section 1 of Public Law 93-273, and notwithstanding any other provision of Section 821 of the Foreign Service Act of 1946, as amended (22 U.S.C. 1076), said Section 821 shall be deemed to be amended to provide for the payment of a minimum annuity as set forth at Section 821-1 of Annex II attached hereto and made a part hereof.

1-105. In accord with Section 2 of Public Law 93-273, Section 821 of the Foreign Service Act of 1946, as amended (22 U.S.C. 1076), shall be deemed to be amended to provide an increase in annuities, which have been computed on the highest five consecutive years of service, as set forth at Section 821-2 of Annex II, attached hereto and made a part hereof.

1-106. In accord with Sections 1(a) and 4 of Public Law 95-317, Section 821 of the Foreign Service Act of 1946, as amended (22 U.S.C. 1076), shall be deemed to be amended to provide for the recomputation of annuities for nonmarried annuitants as set forth at Section 821-3 of Annex II, attached hereto and made a part hereof.

1-107. (a) In accord with Section 1(c) of Public Law 95-317 the last sentence of Section 821(g) of the Foreign Service Act of 1946, as amended (22 U.S.C. 1076(g)), shall be deemed to be amended to read as follows: "The annuity reduction or recomputation shall be effective the first day of the first month beginning one year after the date of marriage."

(b) The amendment made by paragraph (a) above shall apply with respect to survivor elections received by the Secretary on or after October 1, 1978.

1-108. (a) In accord with Section 2 of Public Law 95-317, Section 821(f) of the Foreign Service Act of 1946, as amended (22 U.S.C. 1076(f)), shall be deemed to be amended by adding at the end thereof the following: "An annuity which is reduced under this subsection or any similar prior provisions of law shall, effective the first day of the month following the death of the beneficiary named under this subsection, be recomputed and paid as if the annuity had not been so reduced."

(b) The amendment made by paragraph (a) above shall apply with respect to annuities which commence before, on, or after October 1, 1978, but no monetary benefit by reason of such amendment shall accrue for any period before October 1, 1978.

1-109. In accord with Section 3 of Public Law 95-317, Section 821 of the Foreign Service Act, as amended (22 U.S.C. 1076), shall be deemed to be amended to provide a requirement for annual notice to participants, as set forth at Section 821-4 of Annex II, attached hereto and made a part hereof.

1-110. In accord with subsection (c) and (d) of Section 2 of Public Law 95-382, Section 821 of the Foreign Service Act of 1946, as amended (22 U.S.C. 1076), shall be deemed to be amended to provide World War II Internment annuity credit as set forth at Section 821-5 of Annex II, attached hereto and made a part hereof.

1-111. In accord with Sections 1(a) and 2 (a) and (b) of Public Law 95-382, Section 851 of the Foreign Service Act of 1946, as amended (22 U.S.C. 1091), shall be deemed to be amended to provide additional creditable service as set forth at Section 851-1 at Annex III attached hereto and made a part hereof.

1-112. In accord with Public Law 94-166 and Public Law 95-366, Section 864 of the Foreign Service Act of 1946, as amended (22 U.S.C. 1104), shall be deemed to be amended to read as set forth at Annex IV, attached hereto and made a part hereof.

1-113. Because the provisions of Executive Order No. 11952 of January 7, 1977, have been incorporated into this Order or its Annexes, Executive Order No. 11952 is revoked.

JIMMY CARTER.

THE WHITE HOUSE, July 18, 1979.

ANNEX I

1-101. Section 1 of Public Law 93-260, approved April 9, 1974 (88 Stat. 76).

1-102. Public Law 93-273, approved April 26, 1974 (88 Stat. 93).

1-103. Public Law 94-166, approved December 23, 1975 (89 Stat. 1002).

1-104. Public Law 95-317, approved July 10, 1978 (92 Stat. 382).

1-105. Public Law 95-366, approved September 15, 1978 (92 Stat. 600).

1-106. Public Law 95-382, approved September 22, 1978 (92 Stat. 727).

ANNEX II

Section 821 of the Foreign Service Act of 1946, as amended (22 U.S.C. 1076), shall be deemed to be amended to provide:

821-1. *Payment of Minimum Annuity.*

821-101. The monthly rate of an annuity payable under Section 821 of the Foreign Service Act of 1946, as amended, to an annuitant, or to a survivor annuitant other than

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a child, shall not be less than the smallest primary insurance amount, including any cost of living increase added to that amount, authorized to be paid from time to time under Title II of the Social Security Act (42 U.S.C. 401 *et seq.*).

821-102. The monthly rate of an annuity payable, under said Section 821, to a surviving child shall not be less than the smallest primary insurance amount, including any cost of living increase added to that amount, authorized to be paid from time to time under Title II of the Social Security Act (42 U.S.C. 401 *et seq.*), or three times such primary insurance amount divided by the number of surviving children entitled to an annuity, whichever is the lesser.

821-103. The provisions of this Section 821-1 shall not apply to an annuitant or to a survivor who is or becomes entitled to receive from the United States an annuity or retired pay under any other civilian or military retirement system, benefits under Title II of the Social Security Act (42 U.S.C. 401 *et seq.*), a pension, veterans' compensation, or any other periodic payment of a similar nature, when the monthly rate thereof is equal to or greater than the smallest primary insurance amount, including any cost of living increase added to that amount, authorized to be paid from time to time under Title II of the Social Security Act (42 U.S.C. 401 *et seq.*).

821-104. The provisions of this Section 821-1 apply to all annuities, whether commenced before, on, or after August 1, 1974, but no increase in any annuity shall be paid or recomputed under this subsection for any period prior to August 1, 1974.

821-2. Increase in Annuities.

821-201. An annuity payable to a former participant which is based on a separation occurring prior to October 20, 1969, is increased by \$240.00.

821-202. In lieu of any increase based on an increase under subsection 201, an annuity to the surviving spouse of a participant or annuitant which is based on a separation occurring prior to October 20, 1969, is increased by \$132.00.

821-203. The provisions of this Section 821-2 shall not apply to annuities payable under Section 523(c) of Public Law 94-350 (90 Stat. 847, 22 U.S.C. 1076 note), or any similar prior provision of law, to the surviving spouse of a participant or annuitant.

821-204. The monthly rate of an annuity resulting from an increase under this Section 821-2 shall be considered as the monthly rate of annuity payable under Section 821 of the Foreign Service Act of 1946, as amended (22 U.S.C. 1076), for purposes of computing the minimum annuity as provided in Section 821-1 of this Annex.

821-205. The provisions of this subsection apply to all annuities, whether commenced before, on, or after August 1, 1974, but no increase in any annuity shall be paid or recomputed under this Section 821-2 for any period prior to August 1, 1974.

821-3. Recomputation of Annuities for Nonmarried Annuitants.

821-301. An annuity which is reduced under Section 821(b)(1) of the Foreign Service Act of 1946, as amended (22 U.S.C. 1076(b)(1)), or any similar prior provision of law shall, for each full month during which a retired participant is not married (or is remarried if there is no election in effect under the following sentence), be recomputed and paid as if the annuity had not been so reduced. Upon remarriage the retired participant may irrevocably elect during such marriage, in a signed writing received in the Department of State within one year after such remarriage, a reduction in the participant's annuity for the purpose of allowing an annuity for the participant's spouse in the event such spouse survives the participant. Such reduction shall be equal to the reduction in effect immediately before the dissolution of the previous marriage, and shall be effective the first day of the first month beginning one year after the date of the remarriage.

821-302. Except as provided in subsection 303 below, the provisions of subsection 301 above shall apply with respect to annuities which commence before, on, or after October 1, 1978, but no monetary benefit by reason of such provision shall accrue for any period before October 1, 1978.

821-303. The provisions in subsection 301 above shall not affect the eligibility of any individual to a survivor annuity under Section 821 of the Foreign Service Act of 1946, as amended, or the reduction therefor, in the case of an annuitant who remarried before October 1, 1978, unless the annuitant notifies the Department of State in a signed writing received in the Department within one year after October 1, 1978, that such annuitant does not desire the spouse of the annuitant to receive a survivor annuity in the event of the annuitant's death. Such notification shall take effect the first day of the first month after it is received in the Department.

821-4. Annual Notice to Participants.

The Secretary shall, on an annual basis, inform each participant of such participant's right of election under Section 821-3 of this Annex and under Section 821(g) of the Foreign Service Act of 1946, as amended by Section 1-107 of this Executive Order.

821-5. World War II Internment Annuity Credit.

821-501. An annuity or survivor annuity based upon the service of a participant who is of Japanese ancestry and who was interned or otherwise detained during World War II, as described in Section 851-1 of Annex III of this Executive Order, shall upon application to the Secretary, be recomputed to provide creditable service for such period of internment or detention, as provided in that Section 851-1 of Annex III of this Executive Order. Any such recomputation of an annuity shall apply with respect to months beginning more than 30 days after the date on which application for such recomputation is received by the Secretary.

821-502. The Secretary shall take such action as may be necessary and appropriate to inform individuals entitled to have any service credited by reason of internment or detention, or to have any annuity recomputed under this subsection of their entitlement to such credit or recomputation.

821-503. The Secretary shall, on request, assist any individual referred to in this Section 821-5 in obtaining from any department, agency or other instrument of the United States, such information possessed by such instrumentality as may be necessary to verify the

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[(b) Any provisions of an Executive order issued under the authority of this section shall modify, supersede, or render inapplicable, as the case may be, to the extent inconsistent therewith—

[(1) all provisions of law enacted prior to the effective date of the provision of such Executive order, and

[(2) any prior provision of an Executive order issued under authority of this section.

[PART B—CONTRIBUTING TO THE FUND

[SEC. 811. (a) Seven per centum of the basic salary received by each participant shall be contributed to the Fund for the payment of annuities, cash benefits, refunds, and allowances. An equal sum shall also be contributed from the respective appropriation or fund which is used for payment of his salary. The amounts deducted and withheld from basic salary together with the amounts so contributed from the appropriation or fund, shall be deposited by the Department of State in the Treasury of the United States to the credit of the Fund.

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entitlement of such individual to have any service credited by reason of internment or detention or to have any annuity recomputed under this Section.

821-504. Any department, agency, or other instrumentality of the United States which possesses any information with respect to any such internment or other detention of any participant shall, at the request of the Secretary, furnish such information to the Secretary.

ANNEX III

Section 851 of the Foreign Service Act of 1946, as amended (22 U.S.C. 1091), shall be deemed to be amended to provide:

851-1. *Additional Creditable Service.*

851-101. A participant who is of Japanese ancestry and who, while a citizen of the United States or an alien lawfully admitted to the United States for permanent residence, was interned or otherwise detained at any time during World War II in any camp, installation, or other facility in the United States, or in any territory or possession of the United States, under any policy or program of the United States respecting individuals of Japanese ancestry which was established during World War II in the interests of national security pursuant to:

(A) Executive Order Numbered 9066 dated February 19, 1942;

(B) Section 67 of the Act entitled "An Act to provide a government for the Territory of Hawaii", approved April 30, 1900 (chapter 339, Fifty-sixth Congress; 31 Stat. 153);

(C) Executive Order Numbered 9489, dated October 18, 1944;

(D) Sections 4067 through 4070 of the Revised Statutes of the United States; or
(E) Any other statute, rule, regulation, or order, shall be allowed credit (as civilian service) for any period during which such participant was so interned or otherwise detained after such employee became 18 years of age.

851-102. For the purpose of this Section 851-1, "World War II" means the period beginning on December 7, 1941, and ending on December 31, 1946.

851-103. The provisions of this Section 851-1 shall apply with respect to annuities which commence before, on, or after October 1, 1978, but no monetary benefit by reason of such amendments shall accrue for any period before October 1, 1978.

ANNEX IV

Section 864 of the Foreign Service Act of 1946, as amended (22 U.S.C. 1104), shall be deemed to be amended to read:

SEC. 864. (a) An individual entitled to an annuity from the Fund may make allotments or assignments of amounts from such annuity for such purposes as the Secretary in his sole discretion considers appropriate.

(b) (1) Payments under this title which would otherwise be made to a participant or annuitant based upon his service shall be paid (in whole or in part) by the Secretary to another person if and to the extent expressly provided for in the terms of any court decree of divorce, annulment, or legal separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of divorce, annulment, or legal separation. Any payment under this paragraph to a person bars recovery by any other person.

(2) Paragraph (1) shall only apply to payments made under this title after the date of receipt by the Secretary of written notice of such decree, order, or agreement, and such additional information and documentation as the Secretary may prescribe.

(3) As used in this subsection "court" means any court of any State or the District of Columbia.

(c) None of the moneys mentioned in this title shall be assignable, either in law or equity, except under the provisions of subsections (a) and (b) of this Section, or Section 634(c), or subject to execution, levy, attachment, garnishment, or other legal process, except as otherwise may be provided by Federal laws.

[(b) Each participant shall be deemed to consent and agree to such deductions from basic salary, and payment less such deductions shall be a full and complete discharge and acquittance of all claims and demands whatsoever for all regular services during the period covered by such payment, except the right to the benefits to which he shall be entitled under this Act, notwithstanding any law, rule, or regulation affecting the individual's salary.

[(c) (1) If an officer or employee under another retirement system for Government employees becomes a participant in the system by direct transfer, such officer or employee's total contributions and deposits that would otherwise be refundable on separation including interest accrued thereon, except voluntary contributions, shall be transferred to the Fund effective as of the date such officer or employee becomes a participant in the System. Each such officer or employee shall be deemed to consent to the transfer of such funds and such transfer shall be a complete discharge and acquittance of all claims and demands against the other Government retirement fund on account of service rendered prior to becoming a participant in the system.

[(2) No officer or employee, whose contributions are transferred to the Fund in accordance with the provisions of subsection (c) (1) of this section, shall be required to make contributions in addition to those transferred, for periods of service for which required contributions were made to the other Government retirement fund, nor shall any refund be made to any such officer or employee on account of contributions made during any period to the other Government retirement fund, at a higher rate than that fixed by subsection (d) of this section.

[(d) Any participant credited with civilian service after July 1, 1924 (1) for which no retirement contributions, deductions, or deposits have been made, or (2) for which a refund of such contributions, deductions, or deposits has been made which has not been redeposited, may make a special contribution to the Fund equal to the following percentages of basic salary received for such services:

Service:	Percent of basic salary
From July 1, 1924, to October 15, 1960, inclusive.....	5
From October 16, 1960, to December 31, 1969, inclusive.....	6½
On and after January 1, 1970.....	7

Notwithstanding the foregoing, a special contribution for prior nondeposit service as a National Guard technician which would be creditable under subchapter III, chapter 83, title 5, of the United States Code toward civil service retirement and for which a special contribution has not been made, shall be equal to the special contribution for such service computed in accordance with the above schedule multiplied by the percentage of such service that is creditable under section 851. Special contributions shall include interest computed from the mid-point of each service period included in the computation, or from the date refund was paid, to the date of payment of the special contribution or commencing date of annuity, whichever is earlier. Interest shall be compounded at the rate of 4 per centum per annum to December 31, 1976, and at 3 per centum per annum thereafter. No interest shall be

charged on special contributions made after the effective date of the Foreign Service Retirement Amendments of 1976 for any period of separation from Government service which began before October 1, 1956. Special contributions may be paid in installments when authorized by the Secretary.

[(e) No contributions shall be required for any periods of military or naval service. No contribution shall be required for any period for which credit is allowed to persons of Japanese ancestry for being interned or otherwise detained during World War II, as described in Section 1(a) of Public Law 95-382.³

[(f) A participant or survivor may make a special contribution any time before receipt of annuity and may authorize payment by offset against initial annuity accruals.

[PART C—COMPUTATION AND PAYMENT OF ANNUITIES

[SEC. 821.⁴ (a) The annuity of a participant shall be equal to 2 per centum of his average basic salary for the highest three consecutive years of service multiplied by the number of years, not exceeding thirty-five, of service credit obtained in accordance with the provisions of sections 851 and 853. However, the highest three years of service shall be used in computing the annuity of any participant who serves as chief of mission and whose continuity of service as such is interrupted prior to retirement by appointment or assignment to any other position determined by the Secretary to be of comparable importance. In determining the aggregate period of service upon which the annuity is to be based, the fractional part of a month, if any, shall not be counted. The annuity shall be reduced by 10 per centum of any special contribution described in section 811(d) due for service for which no contributions were made and remaining unpaid unless the participant elects to eliminate the service involved for purposes of annuity computation.

[(b) (1) Unless elected in writing to the contrary at the time of retirement, any married participant shall receive a reduced annuity and provide a maximum survivor annuity for his or her spouse. Such a participant's annuity of any portion thereof designated in writing by the participant as the base for the survivor benefit shall be reduced by 2½ per centum of the first \$3,600 plus 10 per centum of any amount over \$3,600. If an annuitant entitled to receive a reduced annuity under this subsection dies and is survived by a spouse, a survivor annuity shall be paid to the surviving spouse equal to 55 per centum of the full amount of the participant's annuity computed under subsection (a) of this section, or by 55 per centum of any lesser amount the annuitant designated at the time of retirement as the base for the survivor benefit.

[(2) An annuity payable from the Fund to a surviving spouse shall commence on the day after the annuitant dies and shall terminate on the last day of the month before the survivor's (A) remarriage

³ See footnote 2 on page 186.

⁴ See footnote 2 on page 186.

prior to attaining age sixty, or (B) death. If a survivor annuity is terminated because of remarriage under clause (A) above, it shall be restored at the same rate commencing on the date such remarriage is terminated provided any lump sum paid upon termination of the annuity is returned to the Fund.

[(c) (1) If an annuitant dies and is survived by a wife or husband and by a child or children, in addition to the annuity payable to the surviving wife or husband, there shall be paid to or on behalf of each child an annuity equal to the smallest of: (i) \$900; or (ii) \$2,700 divided by the number of children.

[(2) If an annuitant dies and is not survived by a wife or husband but by a child or children, each surviving child shall be paid an annuity equal to the smallest of: (i) \$1,080; or (ii) \$3,240 divided by the number of children.

[(d) If a surviving wife or husband dies or the annuity of a child is terminated, the annuities of any remaining children shall be recomputed and paid as though such wife, husband, or child had not survived the participant. If the annuity to a surviving child is initiated or resumed, the annuities of any other children shall be recomputed and paid from that date as though the annuities to all currently eligible children in the family were then being initiated.

[(e) The annuity payable to a child under subsection (c) or (d) of this section shall begin on the day after the participant dies or if the child is not then qualified, on the first day of the month in which the child becomes eligible. A child's annuity shall terminate on the last day of the month which precedes the month in which eligibility ceases.

[(f) At the time of retirement an unmarried participant may elect to receive a reduced annuity and to provide for an annuity equal to 55 per centum of the reduced annuity payable after his or her death to a beneficiary whose name shall be designated in writing to the Secretary. The annuity payable to a participant making such election shall be reduced by 10 per centum of an annuity computed as provided in paragraph (a) of this section and by 5 per centum of an annuity so computed for each full five years the person designated is younger than the retiring participant, but such total reduction shall not exceed 40 per centum. No such election of a reduced annuity payable to a beneficiary shall be valid until the participant shall have satisfactorily passed a physical examination as prescribed by the Secretary. The annuity payable to a beneficiary under the provisions of this subsection shall begin on the day after the annuitant dies and shall terminate on the last day of the month preceding the survivor's death.

[(g) An annuitant who was unmarried at retirement and who later marries may, within one year after such marriage, irrevocably elect in writing a reduced annuity with benefit to any surviving spouse who qualifies under section 804(2). Receipt by the Secretary of notice of an election under this subsection voids prospectively any election previously made under subsection (f). The reduction in annuity required by an election under this subsection shall be computed and the amount of the survivor annuity shall be determined as if the election were made under subsection (b) (1). The annuity reduction or recom-

putation shall be effective the first day of the month after notice of the election is received by the Secretary.

[(h) A surviving spouse shall not become entitled to a survivor annuity or to the restoration of a survivor annuity payable from the Fund unless the survivor elects to receive it instead of any other survivor annuity to which he or she may be entitled under this or any other retirement system for Government employees.

[(i) Any married annuitant who reverts to retired status with entitlement to a supplemental annuity under section 871 shall, unless the annuitant elects in writing to the contrary at that time, have the supplemental annuity reduced by 10 per centum to provide a supplemental survivor annuity for his or her spouse. Such supplemental survivor annuity shall be equal to 55 per centum of the annuitant's supplemental annuity and shall be payable to a surviving spouse to whom the annuitant was married at the time of reversion to retired status or to whom the annuitant had been married for at least two years at the time of death or who is the parent of a child born of the marriage.

[PAYMENT OF ANNUITY

[SEC. 822. (a) Except as otherwise provided, the annuity of a former participant who has met the eligibility requirements for annuity shall commence on the day after separation from the Service or on the day after pay ceases. The annuity of a former participant who is entitled to a deferred annuity under section 834 or under any other section of this Act shall begin on the day he or she reaches age sixty.

[(b) The annuity to a survivor shall become effective as otherwise specified but shall not be paid until the survivor submits an application therefor supported by such proof of eligibility as the Secretary may require. If such application or proof of eligibility is not submitted during an otherwise eligible person's lifetime, no annuity shall be due or payable to his or her estate.

[(c) An individual entitled to annuity from the Fund may decline to accept all or any part of the annuity by submitting a signed waiver to the Secretary. The waiver may be revoked in writing at any time. Payment of the annuity waived may not be made for the period during which the waiver was in effect.

[(d) Recovery of overpayments under this title may not be made from an individual when, in the judgment of the Secretary, the individual is without fault, and recovery would be against equity and good conscience or administratively infeasible.

[PART D—BENEFITS ACCRUING TO CERTAIN PARTICIPANTS

[RETIREMENT FOR DISABILITY OR INCAPACITY—PHYSICAL EXAMINATION—RECOVERY

[SEC. 831. (a) Any participant who has five years of service credit toward retirement under the System, excluding military or naval service, and who becomes totally disabled or incapacitated for useful and efficient service by reason of disease, illness, or injury not due to vicious habits, intemperance, or wilful misconduct on his part, shall,

upon his own application or upon order of the Secretary, be retired on an annuity computed as prescribed in section 821. If the disabled or incapacitated participant has less than twenty years of service credit toward his retirement under the System at the time he is retired, his annuity shall be computed on the assumption that he has had twenty years of service, but the additional service credit that may accrue to a participant under this provision shall in no case exceed the difference between his age at the time of retirement and the mandatory retirement age applicable to his class in the Service.

[(b) In each case, the participant shall be given a physical examination by one or more duly qualified physicians or surgeons designated by the Secretary to conduct examinations, and disability shall be determined by the Secretary on the basis of the advice of such physicians or surgeons. Unless the disability is permanent, like examinations shall be made annually until the annuitant has reached the statutory mandatory retirement age for his class in the Service. If the Secretary determines, on the basis of the advice of one or more duly qualified physicians or surgeons conducting such examinations that an annuitant has recovered to the extent that he can return to duty, the annuitant may apply for reinstatement or reappointment in the Service within one year from the date his recovery is determined. Upon application the Secretary shall reinstate any such recovered disability annuitant in the class in which he was serving at time of retirement, or the Secretary may, taking into consideration the age, qualifications, and experience of such annuitant, and the present class of his contemporaries in the Service, appoint him or in the case of an annuitant who is a former Foreign Service officer, recommend that the President appoint him, by and with the advice and consent of the Senate, to a class higher than the one in which he was serving prior to retirement. Payment of the annuity shall continue until a date six months after the date of the examination showing recovery or until the date of reinstatement or reappointment in the Service, whichever is earlier. Fees for examinations under this provision, together with reasonable traveling and other expenses incurred in order to submit to examination, shall be paid out of the Fund. If the annuitant fails to submit to examination as required under this section, payment of the annuity shall be suspended until continuance of the disability is satisfactorily established.

[(c) If a recovered disability annuitant whose annuity is discontinued is for any reason not reinstated or reappointed in the Service, he shall be considered to have been separated within the meaning of section 834 as of the date he was retired for disability and he shall, after the discontinuance of the disability annuity, be entitled to the benefit of that section or of section 841 except that he may elect voluntary retirement in accordance with the provisions of section 636 if he can qualify under its provisions.

[(d) No participant shall be entitled to receive an annuity under this Act and compensation for injury or disability to himself or herself under subchapter I of chapter 81, title 5, United States Code, covering the same period of time except that a participant may simultaneously receive both an annuity under this section and scheduled disability payments under section 8107 of title 5, United States Code.

This provision shall not bar the right of any claimant to the greater benefit conferred by either this Act or such subchapter for any part of the same period of time. Neither this provision nor any provision of such subchapter shall be so construed as to deny the right of any participant to receive an annuity under this Act and to receive concurrently any payment under such subchapter by reason of the death of any other person.

[(e) Notwithstanding any provision of law to the contrary, the right of any person entitled to an annuity under this Act shall not be affected because such person has received an award of compensation in a lump sum under section 8135 of title 5, United States Code except that where such annuity is payable on account of the same disability for which compensation under such section has been paid, so much of such compensation as has been paid for any period extended beyond the date such annuity becomes effective, as determined by the Secretary of Labor, shall be refunded to the Department of Labor, to be paid into the Federal Employees' Compensation Fund. Before such person shall receive such annuity he shall (1) refund to the Department of Labor the amount representing such computed payments for such extended period, or (2) authorize the deduction of such amount from the annuity payable to him under this Act, which amount shall be transmitted to such Department for reimbursement to such Fund. Deductions from such annuity may be made from accrued and accruing payments, or may be prorated against and paid from accruing payments in such manner as the Secretary of Labor shall determine, whenever he finds that the financial circumstances of the annuitant are such as to warrant such deferred refunding.

[DEATH IN SERVICE

[SEC. 832. (a) If a participant dies and no claim for annuity is payable under the provisions of this Act, the lump-sum credit shall be paid in accordance with section 841.

[(b) If a participant who has at least eighteen months of civilian service credit toward retirement under the system dies before separation or retirement from the Service and is survived by a spouse, such surviving spouse shall be entitled to an annuity equal to 55 per centum of the annuity computed in accordance with the provisions of subsection (e) of this section and of section 821(a) and if the participant had less than three years creditable civilian service at the time of death, the survivor annuity shall be computed on the basis of the average salary for the entire period of such service.

[(c) If a participant who has at least eighteen months of civilian service credit toward retirement under the system dies before separation or retirement from the Service and is survived by a wife or a husband and a child or children, each surviving child shall be entitled to an annuity computed in accordance with subsections (c) (1) and (d) of section 821.

[(d) If a participant who has at least eighteen months of civilian service credit toward retirement under the system dies before separation or retirement from the Service and is not survived by a wife or husband, but by a child or children, each surviving child shall be entitled to an annuity computed in accordance with subsections (c) (2) and (d) of section 821.

[(e) If, at the time of his or her death, the participant had less than twenty years of service credit toward retirement under the System, the annuities payable in accordance with paragraph (b) of this section shall be computed in accordance with the provisions of section 821 on the assumption he or she has had twenty years of service, but the additional service credit that may accrue to a deceased participant under this provision shall in no case exceed the difference between his or her age on the date of death and the mandatory retirement age applicable to his or her class in the Service. In all cases arising under paragraphs (b), (c), (d), or (e) of this section, it shall be assumed that the deceased participant was qualified for retirement on the date of his death.

[(f) If an annuitant who elected a reduced annuity dies in service after being recalled under section 520(b) and is survived by a spouse entitled to a survivor annuity based on such an election, such survivor annuity shall be computed as if the recall service had otherwise terminated on the day of death and the deceased's annuity had been resumed in accordance with section 871. If such a death occurs after the annuitant had completed sufficient recall service to attain eligibility for a supplemental annuity, a surviving spouse, in addition to any other benefits, shall be entitled to elect, in lieu of a refund of retirement contributions made during the recall service, a supplemental survivor annuity computed and paid under section 821(i) as if the recall service had otherwise terminated. If the annuitant had completed sufficient recall service to attain eligibility to have his or her annuity determined anew, a surviving spouse may elect, in lieu of any other benefit under this title, to have the annuitant's rights redetermined and to receive a survivor annuity computed under subsection (b) of this section on the basis of the annuitant's total service.

[(g) Annuities that become payable under this section shall commence, terminate, and be resumed in accordance with subsection (b) (2), (e), or (h) of section 821, as appropriate.

[DISCONTINUED SERVICE RETIREMENT

[SEC. 834. Any participant who voluntarily separates from the Service after obtaining at least five years of service credit toward retirement, under the System, excluding military or naval service may, upon separation from the Service or at any time prior to becoming eligible for an annuity, elect to have his contributions to the Fund returned to him in accordance with the provisions of section 841, or to leave his contributions in the Fund and receive an annuity, computed as prescribed in section 821, commencing at the age of sixty years.

[PART E—LUMP-SUM PAYMENTS

[SEC. 841. (a) "Lump-sum credit" as used in this title means the compulsory and special contributions to a participant's or former participant's credit in the Fund plus interest thereon compounded at 4 per centum per annum to the date of separation or December 31, 1976, whichever is earlier, and after such date for a participant who separates from the Service after completing at least one year of civilian

service and before completing five years of such service, at the rate of 3 per centum per annum to the date of separation. Interest shall not be paid for a fractional part of a month in the total service or on compulsory and special contributions from an annuitant for recall service or other service performed after the date of separation which forms the basis for annuity.

[(b) Whenever a participant becomes separated from the Service without becoming eligible for an annuity or a deferred annuity in accordance with the provisions of this Act, the lump-sum credit shall be paid to the participant.

[(c) Whenever an annuitant becomes separated from the Service following a period of recall service without becoming eligible for a supplemental or recomputed annuity under section 871, the annuitant's compulsory contributions to the Fund for such service together with any special contributions the annuitant may have made for other service performed after the date of separation from the Service which forms the basis for annuity, shall be returned.

[(d) If all annuity rights under this title based on the service of a deceased participant or annuitant terminate before the total annuity paid equals the lump-sum credit, the difference shall be paid in the order of precedence shown in subsection (g) of this section.

[(e) If a participant or former participant dies and is not survived by a person eligible for an annuity under this title or by such a person or persons all of whose annuity rights terminate before a claim for survivor annuity is filed, the lump-sum credit shall be paid in accordance with subsection (g) of this section.

[(f) If an annuitant who was a former participant dies, annuity accrued and unpaid, shall be paid in accordance with subsection (g) of this section.

[(g) Payments authorized in subsections (d) through (f) of this section shall be paid in the following order of precedence to such person or persons surviving the participant and alive on the date entitlement to the payment arises, upon the establishment of a valid claim therefor, and such payment shall be a bar to recovery by any other person:

[(1) to the beneficiary or beneficiaries last designated by the participant before or after retirement in a signed and witnessed writing received by the Secretary prior to the participant's death, for which purpose a designation, change, or cancellation of beneficiary in a will or other document not so executed and filed shall have no force or effect;

[(2) if there be no such beneficiary, to the surviving wife or husband of such participant;

[(3) if none of the above, to the child or children of such participant (including adopted and natural children but not step-children) and descendants of deceased children by representation;

[(4) if none of the above, to the parents of such participant or the survivor of them;

[(5) if none of the above, to the duly appointed executor or administrator of the estate of such participant; and

[(6) if none of the above, to other next of kin of such participant as may be determined in the judgment of the Secretary to

be legally entitled thereto, except that no payment shall be made pursuant to this paragraph (6) until after the expiration of thirty days from the death of the participant or annuitant.

[(h) Annuity accrued and unpaid on the death of a survivor annuitant shall be paid in the following order of precedence, and the payment bars recovery by any other person: First, to the duly appointed executor or administrator of the estate of the survivor annuitant; second, if there is no such executor or administrator, payment may be made, after the expiration of thirty days from the date of death of such survivor annuitant, to such person as may be determined by the Secretary to be entitled under the laws of the survivor annuitant's domicile at the time of death.

[(i) Amounts deducted and withheld from basic salary of a participant under section 811 from the beginning of the first pay period after the participant has completed thirty-five years of service computed under sections 851 and 853, but excluding service credit for unused sick leave under subsection (b) of section 851, together with interest on the amounts at the rate of 3 per centum a year compounded annually from the date of the deduction to the date of retirement or death, shall be applied toward any special contribution due under subsection (d) of section 811, and any balance not so required shall be refunded in a lump sum to the participant after separation, or in the event of a death in service, to a beneficiary in the order of precedence specified in subsection (g) of this section.

[PART F—PERIOD FOR SERVICE FOR ANNUITIES

[CREDITABLE SERVICE

[Sec. 851.⁵ (a) Except as otherwise specified by law, all periods of civilian and military and naval service and periods of absence and separation therefrom completed by a participant through the date of final separation from the Service that would be creditable, as determined by the Secretary, under section 8332 of title 5, United States Code, toward retirement under the Civil Service Retirement and Disability System, if performed by an employee under that system, shall be creditable for purposes of this title. Conversely, any such service performed after December 31, 1976, that is not creditable under specified conditions under section 8332 of title 5, United States Code, shall be excluded under this title under the same conditions.

[(b) In computing any annuity under this title, the total service of a participant who retires on an immediate annuity or who dies leaving a survivor or survivors entitled to annuity includes, without regard to the thirty-five-year limitation imposed by section 821(a), the days of unused sick leave to his credit except that these days will not be counted in determining average basic salary or annuity eligibility under this title. A contribution to the Fund shall not be required from a participant for this service credit.

[(c) (1) A participant who enters on approval leave without pay to serve as a full-time officer or employee of an organization composed primarily of Government employees may, within sixty days after

⁵ See footnote 2 on page 159, part 1.

entering on that leave without pay, file with the employing agency an election to receive full retirement credit for such periods of leave without pay and arrange to pay concurrently into the Fund through the employing agency, amounts equal to the retirement deductions and agency contributions on the Foreign Service salary rate that would be applicable if the participant were in a pay status. If the election and all payments provided by this subsection are not made for the periods of such leave without pay occurring after the effective date of this subsection, the participant may not receive any credit for such periods of leave without pay occurring after such date.

[(2) A participant may make a special contribution for any period or periods of approved leave without pay while serving, before the effective date of this subsection, as a full-time officer or employee of an organization composed primarily of Government employees. Any such contribution shall be based upon the suspended Foreign Service salary rate, and shall be computed in accordance with section 811. A participant who makes such a contribution shall be allowed full retirement credit for the period or periods of leave without pay. If this contribution is not made, up to six months' retirement credits shall be allowed for such periods of leave without pay each calendar year.

[(d) A participant who has received a refund of retirement contributions (which has not been repaid) under this or any other retirement system for Government employees covering service which may be creditable may make a special contribution for such service pursuant to section 811. Credit may not be allowed for service covered by the refund unless the special contribution is made.

[(e) No credit in annuity computation shall be allowed for any period of civilian service for which a participant made retirement contributions to another retirement system for Government employees unless (1) the right to any annuity under the other system which is based on such service is waived, and (2) a special contribution is made covering such service pursuant to section 811.

[(f) A participant who during the period of a war, or of a national emergency as proclaimed by the President or declared by the Congress, leaves the Service to enter the military service is deemed, for the purpose of this title, as not separated from the Service unless the participant applies for and receives a lump-sum payment under section 841. However, the participant is deemed to be separated from the Service after the expiration of five years of such military service.

EXTRA CREDIT FOR SERVICE AT UNHEALTHFUL POSTS

[SEC. 853. The President may from time to time establish a list of places which by reason of climatic or other extreme conditions are to be classed as unhealthful posts, and each year of duty subsequent to January 1, 1900, at such posts inclusive of regular leaves of absence, of participants thereafter retired, shall be counted as one year and a half, and so on in like proportion in reckoning the length of service for the purpose of retirement, fractional months being considered as full months in computing such service, but no such extra credit for service at such unhealthful posts shall be credited to any participant who shall have been paid a salary differential in accordance with section

443, as amended, for such service performed subsequent to the date of enactment of the Foreign Service Act Amendments of 1955.

[RECOMPUTATION OF ANNUITIES OF CERTAIN FORMER PARTICIPANTS]

[SEC. 855. The annuity of each former participant under the System, who retired prior to July 28, 1956, and who at the time of his retirement had creditable service in excess of thirty years, shall be recomputed on the basis of actual years of creditable service not in excess of thirty-five years. Service which was not creditable under the System on the date a former participant retired, shall not be included as creditable service for the purpose of this recomputation. The annuities payable to such persons shall, when recomputed, be paid at the rates so determined, but no such recomputation or any other action taken pursuant to this section shall operate to reduce the rate of the annuity any such person is entitled to receive under the System.

[PART G—MONEYS]

[ESTIMATE OF APPROPRIATIONS NEEDED]

[SEC. 861. The Secretary of the Treasury shall prepare the estimates of the annual appropriations required to be made to the Fund, and shall make actuarial valuations of such funds at intervals of five years, or oftener if deemed necessary by him. The Secretary of State may expend from money to the credit of the Fund an amount not exceeding \$5,000 per annum for the incidental expenses necessary in administering the provisions of this title, including actuarial advice.

[INVESTMENT OF FUND]

[SEC. 863. The Secretary of the Treasury shall invest from time to time in interest-bearing securities of the United States such portions of the Fund as in his judgment may not be immediately required for the payment of annuities, cash benefits, refunds, and allowances, and the income derived from such investments shall constitute a part of such Fund.

[ATTACHMENT OF MONEYS]

[SEC. 864.* None of the moneys mentioned in this title shall be assignable either in law or equity, or be subject to execution, levy, attachment, garnishment, or other legal process, except as provided in section 634(c).

[PAYMENTS FOR FUTURE BENEFITS]

[SEC. 865. (a) Any statute which authorizes—

[(1) new or liberalized benefits payable from the Fund, including annuity increases other than under section 882;

[(2) extension of the benefits of the System to new groups of employees; or

[(3) increases in salary on which benefits are computed;
is deemed to authorize appropriations to the Fund to finance the

* See footnote 2 on page 159, part 1.

unfunded liability created by that statute, in thirty equal annual installments with interest computed at the rate used in the then most recent valuation of the System and with the first payment thereof due as of the end of the fiscal year in which each new or liberalized benefit, extension of benefits, or increase in salary is effective.

[(b) There is authorized to be appropriated to the Fund for each fiscal year an amount equal to the amount of the Foreign Service normal cost for that year which is not met by contributions to the Fund under section 811(a).

[UNFUNDED LIABILITY OBLIGATIONS

[SEC. 866. At the end of each fiscal year, the Secretary shall notify the Secretary of the Treasury of the amount equivalent to (1) interest on the unfunded liability computed for that year at the interest rate used in the then most recent valuation of the System, and (2) that portion of disbursement for annuities for that year which the Secretary estimates is attributable to credit allowed for military service. Before closing the accounts for each fiscal year, the Secretary of the Treasury shall credit to the Fund, as a Government contribution, out of any money in the Treasury of the United States not otherwise appropriated, the following percentages of such amounts: 10 per centum for 1971; 20 per centum for 1972; 30 per centum for 1973; 40 per centum for 1974; 50 per centum for 1975; 60 per centum for 1976; 70 per centum for 1977; 80 per centum for 1978; 90 per centum for 1979; and 100 per centum for 1980 and for each fiscal year thereafter. The Secretary shall report to the President and to the Congress the sums credited to the Fund under this section.

[(b) The provisions of section 866 of the Foreign Service Act of 1946, as contained in the amendment made by subsection (a) of this section, shall become effective at the beginning of the fiscal year which ends on June 30, 1971.

[PART H—ANNUITANTS RECALLED, REINSTATED OR REAPPOINTED IN THE SERVICE OR REEMPLOYED IN THE GOVERNMENT

[ANNUITY ADJUSTMENT FOR RECALL SERVICE

[SEC. 871. Any annuitant recalled to duty in the Service in accordance with the provisions of section 520(b) shall, while so serving, be entitled in lieu of annuity to the full salary of the class in which serving. During such service, the recalled annuitant shall make contributions to the Fund in accordance with the provisions of section 811. On the day following termination of the recall service, the former annuity shall be resumed adjusted by any cost-of-living increases under section 882 that became effective during the recall period. If the recall service lasts less than one year, the annuitant's contributions to the Fund during recall service shall be refunded in accordance with section 841. If the recall service lasts more than one year, the annuitant may, in lieu of such refund, elect a supplemental annuity computed under section 821 on the basis of service credit and average salary earned during the recall period irrespective of the number of years of service credit previously earned. If the recall service continues for at

least five years, the annuitant may elect to have his or her annuity determined anew under section 821 in lieu of any other benefits under this section. Any annuitant who is recalled under section 520(b) may, upon written application, count as recall service any prior service that is creditable under section 851 that was performed after the separation upon which his or her annuity is based.

[REEMPLOYMENT

[SEC. 872. (a) Notwithstanding any other provision of law, any officer or employee of the Service, who has retired under this Act, as amended, and is receiving an annuity pursuant thereto, and who is reemployed in the Federal Government service in any appointive position either on a part-time or full-time basis, shall be entitled to receive the salary of the position in which he is serving plus so much of his annuity payable under this Act, as amended, which when combined with such salary does not exceed during any calendar year the basic salary such officer or employee was entitled to receive under section 412 or 415 of the Act, as amended, on the date of his retirement from the Service. Any such reemployed officer or employee who receives salary during any calendar year in excess of the maximum amount which he may be entitled to receive under this paragraph shall be entitled to such salary in lieu of benefits hereunder.

[(b) When any such retired officer or employee of the Service is reemployed, the employer shall send a notice to the Department of State of such reemployment together with all pertinent information relating thereto, and shall pay directly to such officer or employee the salary of the position in which he is serving.

[(c) In the event of any overpayment under this section, such overpayment shall be recovered by withholding the amount involved from the salary payable to such reemployed officer or employee, or from any other moneys, including his annuity, payable in accordance with the provisions of this title.

[PART I—VOLUNTARY CONTRIBUTIONS

[SEC. 881. (a) The Voluntary contribution account shall be the sum of unrefunded amounts heretofore voluntarily contributed by any participant or former participant under this section or under a prior corresponding provision of law, plus interest compounded at the rate of 3 per centum per annum to date of separation from the Service or in case of a participant or former participant separated with entitlement to a deferred annuity to the date the voluntary contribution account is claimed, or to the commencing date fixed for the deferred annuity or to the date of death, whichever is earlier. A participant's or former participant's account shall, effective on the date the participant becomes eligible for an annuity or a deferred annuity and at the participant's election, be—

- [(1)** returned to him in a lump sum; or
- [(2)** used to purchase an additional life annuity; or
- [(3)** used to purchase an additional life annuity for himself and to provide for a cash payment on his death to a beneficiary whose name shall be notified in writing to the Secretary by the participant; or

[(4) used to purchase an additional life annuity for himself and a life annuity commencing on his death payable to a beneficiary whose name shall be notified in writing to the Secretary by the participant with a guaranteed return to the beneficiary or his legal representative of an amount equal to the cash payment referred to in paragraph 3.

[(b) The benefits provided by subparagraphs 2, 3, or 4 of paragraph (a) of this section shall be actuarially equivalent in value to the payment provided for by paragraph (a)(1) of this section and shall be calculated upon such tables of mortality as may be from time to time prescribed for this purpose by the Secretary of the Treasury.

[(c) The first annuity increase under this section after the effective following receipt of an application therefor from a present or former participant provided application is filed prior to payment of any additional annuity. If not sooner paid, the account shall be paid at such time as the participant separates from the Service for any reason without entitlement to an annuity, or a deferred annuity or at such time as a former participant dies or withdraws compulsory contributions to the Fund. In the case of death, the account shall be paid in the order of precedence specified in section 841 (g).

[PART J—COST-OF-LIVING ADJUSTMENTS OF ANNUITIES

[SEC. 882. (a) A cost-of-living annuity increase shall become effective under this section on the effective date of each such increase under section 8340(b) of title 5, United States Code. Each such increase shall be applied to each annuity payable from the Fund which has a commencing date not later than the effective date of the increase.

[(b) The first annuity increase under this section after the effective date of this paragraph shall equal the per centum rise in the price index, adjusted to the nearest one-tenth of 1 per centum, between the month last used to establish an increase under this section and the base month used to establish the concurrent increase under section 8340(b) of title 5, United States Code. Each subsequent annuity increase under this section shall be identical to the corresponding percentage increase under section 8340(b) of title 5, United States Code.

[(c) Eligibility for an annuity increase under this section shall be governed by the commencing date of each annuity payable from the Fund as of the effective date of an increase except as follows:

[(1) An annuity, except a deferred annuity under section 834 or any other section of this Act, payable from the Fund to a participant who retires and receives an immediate annuity, or to a surviving spouse of a deceased participant who dies in service or who dies after being separated under the provisions of section 634(b)(2), which has a commencing date after the effective date of the then last preceding general annuity increase under this section shall not be less than the annuity which would have been payable if the commencing date of such annuity had been the effective date of such last preceding increase. In the administration of this paragraph, the number of days of unused sick leave to an employee's or deceased employee's credit on the effective date of the then last preceding general annuity increase under this section shall be deemed to be equal to the number of days

of unused sick leave to his or her credit on the day of separation from the Service.

[(2) Effective from its commencing date, an annuity payable from the Fund to an annuitant's survivor, except a child entitled under section 821(c) or 832(c) or (d), shall be increased by the total per centum increase the annuitant was receiving under this section at death.

[(3) For purposes of computing or recomputing an annuity to a child under section 821(c) or (d) or 832(c) or (d), the items \$900, \$1,080, \$2,700 and \$3,240 appearing in section 821(c) shall be increased by the total per centum increases by which corresponding amounts are being increased under section 8340 of title 5, United States Code, on the date the child's annuity becomes effective.

[(d) No increase in annuity provided by this section shall be computed on any additional annuity purchased at retirement by voluntary contributions.

[(e) The monthly installment of annuity after adjustment under this section shall be fixed at the nearest dollar, except such installment shall after adjustment reflect an increase of at least \$1.

[(f) Effective on the first day of the second month which begins after the effective date of the Foreign Service Retirement Amendments of 1976 or on the commencing date of an annuity, whichever is later, the annuity of each surviving spouse whose entitlement to annuity resulted from the death—

[(1) before the effective date of the Foreign Service Retirement Amendments of 1976, of (A) a participant, or (B) a former participant entitled to benefits under section 634(b); or

[(2) of an annuitant who, prior to the effective date of the Foreign Service Retirement Amendments of 1976, elected a reduced annuity under this or any other Act in order to provide a spouse's survivor annuity; shall be increased by 10 per centum.

[TITLE IX—ALLOWANCES AND BENEFITS

[PART A—ALLOWANCES AND SPECIAL ALLOTMENTS

[REPRESENTATION ALLOWANCES

[SEC. 901. In accordance with such regulations as the President may prescribe and notwithstanding the provisions of section 1765 of the Revised Statutes (5 U.S.C. 70), the Secretary is authorized to grant to any officer or employee of the Service who is a citizen of the United States allowances in order to provide for the proper representation of the United States by officers or employees of the Service.

[PART B—TRAVEL AND RELATED EXPENSES

[GENERAL PROVISIONS

[SEC. 911. The Secretary may, under such regulations as he shall prescribe, pay—

[(1) the travel expenses of officers and employees of the Service, including expenses incurred while traveling pursuant to orders issued by the Secretary in accordance with the provisions of section 933 with regard to the granting of home leave;

[(2) the travel expenses of the members of the family of an officer or employee of the Service when proceeding to or returning from his post of duty; accompanying him on authorized home leave; accompanying him for representational purposes on authorized travel within the country of his assignment or, at the discretion of the Secretary, outside the country of his assignment, but in no case to exceed one member of his family; or otherwise traveling in accordance with authority granted pursuant to the terms of this or any other Act;

[(3) the cost of transporting the furniture and household and personal effects of an officer or employee of the Service to his successive posts of duty and, on the termination of his services, to the place where he will reside;

[(4) the cost of packing and unpacking, transportation to and from a place of storage, and storing the furniture and household and personal effects of an officer or employee of the Service, when he is absent from his post of assignment under orders, or when he is assigned to a post to which he cannot take or at which he is unable to use such furniture and household and personal effects, or when it is in the public interest or more economical to authorize storage; but in no instance shall the weight or volume of the effects stored together with the weight or volume of the effects transported exceed the maximum limitations fixed by regulations, when not otherwise fixed by law;

[(5) the cost of packing and unpacking, transporting to and from a place of storage, and storing the furniture and household and personal effects of an officer or employee of the Service in connection with assignment or transfer to a new post, from the date of his departure from this last post or from the date of his departure from his place of residence in the case of a new officer or employee and for not to exceed three months after arrival at the new post, or until the establishment of residence quarters, whichever shall be shorter; and in connection with separation of an officer or employee of the Service, the cost of packing and unpacking, transporting to and from a place of storage, and storing for a period not to exceed three months, his furniture and household and personal effects; not in no instance shall the weight or volume of the effects stored together with the weight or volume of the effects transported exceed the maximum limitations fixed by regulations, when not otherwise fixed by law;

[(6) the travel expenses of the members of the family and the cost of transporting the personal effects and automobile of an officer or employee of the Service, whenever the travel of such officer or employee is occasioned by changes in the seat of the government whose capital is his post;

[(7) the travel expenses and transportation costs incident to the removal of the members of the family of an officer or employee of the Service and his furniture and household and personal

effects, including automobiles, from a post at which, because of prevalence of disturbed conditions, there is imminent danger to the life and property, and the return of such persons, furniture, and effects to such post upon the cessation of such conditions; or to such other post as may in the meantime have become the post to which such officer or employee has been assigned;

[(8) the cost of preparing and transporting to their former homes in the continental United States or to a place not more distant, the remains of an officer or employee of the Service who is a citizen of the United States and of the members of his family who may die abroad or while in travel status;

[(9) the travel expenses of officers and employees of the Service who are citizens of the United States, and members of their families, while serving at posts specifically designated by the Secretary for purposes of this paragraph, for rest and recuperation to other locations abroad having different environmental conditions than those at the post at which such officers and employees are serving or to the United States, provided that such travel expenses shall be limited to the cost for each officer or employee and members of his family of one round trip during any continuous two-year tour unbroken by home leave and two round trips during any continuous three-year tour unbroken by home leave;

[(10) the travel expenses of members of the family accompanying, preceding, or following an officer or employee if, while he is en route to or from a post of assignment, he is ordered temporarily for orientation and training or is given other temporary duty;

[(11) the travel expenses of officers and employees of the Service for up to two round trips each year for purposes of family visitation in situations where the family of the officer or employee is prevented by official order from accompanying such officer or employee to, or has been ordered evacuated from, his assigned post because of danger from hostile activity, except that, with respect to any such officer or employee whose dependents are located abroad, the Secretary may authorize such additional trips as he deems appropriate not to exceed the equivalent cost of two round trips of less than first class to the District of Columbia, and the travel expenses of officers or employees stationed abroad (or their dependents located abroad), for purposes of family visitation in emergency situations involving personal hardship: *Provided*, That the facilities of the Military Airlift Command shall be utilized whenever possible for travel authorized under this section; and

[(12) without regard to rates provided under the authority of section 5702 of title 5, United States Code, the travel expenses of employees of the Department on protective security missions within the United States territories and possessions, the Commonwealth of Puerto Rico; and the Canal Zone, at not to exceed the cost of lodging plus \$24 per day.

[LOAN OF HOUSEHOLD FURNISHINGS AND EQUIPMENT

[SEC. 912. The Secretary may, if he shall find it in the interest of the Government to do so as a means of eliminating transportation

costs, provide officers and employees of the Service with basic household furnishings and equipment for use on a loan basis in personally owned or leased residences.

[TRANSPORTATION OF MOTOR VEHICLES

[SEC. 913. The Secretary may, notwithstanding the provisions of any other law, transport for or on behalf of an officer or employee of the Service, a privately owned motor vehicle in any case in which he shall determine that water, rail, or air transportation of the motor vehicle is necessary or expedient for all or any part of the distance between points of origin and destination. Not more than one motor vehicle of any such officer or employee may be transported under authority of this section during any four-year period, except that, as a replacement for such motor vehicle, one additional motor vehicle of any such officer or employee may be so transported during such period upon approval, in advance, by the Secretary and upon a determination, in advance, by the Secretary that such replacement is necessary for reasons beyond the control of the officer or employee and is in the interest of the Government. After the expiration of a period of four years following the date of transportation under authority of this section of a privately owned motor vehicle of any officer or employee who has remained in continuous service outside the continental United States (excluding Alaska and Hawaii) during such period, the transportation of a replacement for such motor vehicle for such officer or employee may be authorized by the Secretary in accordance with this section.

[USE OF GOVERNMENT OWNED OR LEASED VEHICLES

[SEC. 914. Notwithstanding the provisions of section 5 of the Act of July 16, 1914, as amended (5 U.S.C. 78), the Secretary may authorize any principal officer to approve the use of Government owned or leased vehicles located at his post for transportation of United States Government employees and their dependents when public transportation is unsafe or not available.

[PART C—POST EMPLOYEE SERVICES

[SEC. 921. (a) The Secretary may, under such regulations as he may prescribe, establish and maintain emergency commissary or mess services, in such places abroad where, in his judgment, such services are necessary temporarily to insure the effective and efficient performance of the duties and responsibilities of the Service, such services to be available to the officers and employees of all Government agencies located in any such places abroad. Reimbursements incident to the maintenance and operation of commissary or mess service shall be at not less than cost as determined by the Secretary and shall be used as working funds: *Provided*, That an amount equal to the amount expended for such services shall be covered into the Treasury as miscellaneous receipts.

[(b) The Secretary, under such regulations as he may prescribe, may authorize and assist in the establishment, maintenance, and operation by officers and employees of the Service of non-Government-operated services and facilities at posts abroad, including the furnishing of

space, utilities, and properties owned or leased by the United States for use by its diplomatic and consular missions. The provisions of the Foreign Service Buildings Act, 1926 (22 U.S.C. 292-300), and section 13 of the Act entitled "An Act to provide certain basic authority for the Department of State", approved August 1, 1956 (22 U.S.C. 2684), may be utilized by the Secretary in providing such assistance. Services and facilities established under this subsection shall be made available, insofar as practicable, to officers and employees of other Government agencies and their dependents who are stationed abroad. Such services and facilities shall not be established in localities where another United States agency operates similar services or facilities unless the Secretary determines that such additional services or facilities are necessary.

[(c) Charges at any post abroad for a service or facility authorized or assisted under this section shall be at the same rate for all civilian personnel of the Government serviced thereby, and all charges for supplies furnished to such a service or facility abroad by any Government agency shall be at the same rate as that charged by the furnishing agency to its comparable civilian services and facilities.

[PART D—LEAVES OF ABSENCE

[ORDERING RETURN OF PERSONNEL TO UNITED STATES ON LEAVES OF ABSENCE

[SEC. 933. (a) The Secretary may order to the continental United States, its territories and possessions, on statutory leave of absence any officer or employee of the Service who is a citizen of the United States upon completion of eighteen months' continuous service abroad and shall so order as soon as possible after completion of three years of such service.

[(b) While in the continental United States, its territories and possessions, on leave, the service of any officer or employee shall be available for such work or duties in the Department or elsewhere as the Secretary may prescribe, but the time of such work or duties will not be counted as leave.

[RESERVE OFFICERS ASSIGNED TO THE SERVICE

[SEC. 934. (a) A Reserve officer, assigned to the Service from any Government agency shall, notwithstanding the provisions of any other law, be granted annual leave of absence and sick leave of absence in accordance with the provisions of part D of this title during the period of his assignment.

[(b) Under such regulations as the President may prescribe, a person assigned to the Service as a Reserve officer from any Government agency may, notwithstanding the provisions of the Act of December 21, 1944 (58 Stat. 845; 5 U.S.C. 61b), transfer to the Service any annual or sick leave of absence standing to his credit at the time of his assignment to the Service. On his return to the agency by which he is regularly employed, he may transfer the aggregate of his accumulated and current annual and sick leave to that agency but the amount of leave so transferred shall not exceed the maximum which

an officer or employee of the agency to which he is returning may have to his credit on the date of his return.

[TRANSFER OF LEAVE OF ABSENCE]

[SEC. 935. Under such regulations as the President may prescribe an officer or employee of the Service who resigns from the Service in order to accept an appointment in any Government agency may transfer to such Government agency any annual or sick leave of absence standing to his credit at the time of his resignation from the Service and any officer or employee of any Government agency who resigns from such agency in order to accept an appointment to the Service may transfer to the Service any annual or sick leave of absence standing to his credit at the time of his resignation from the Government agency in which he was employed, but in no event shall the amount of annual or sick leave of absence so transferred exceed the maximum amount of the annual or sick leave of absence which may be accumulated in either the Service or the Government agency to which such person is appointed, as the case may be.

[APPLICATION OF ANNUAL AND SICK LEAVE ACT OF 1951]

[SEC. 936. The Annual and Sick Leave Act of 1951, as amended (5 U.S.C. 2061 and the following), shall apply to career ministers and Foreign Service officers, who are not serving as chiefs of mission or who are not serving in a position in the Department which requires appointment by the President, by and with the advice and consent of the Senate, and to Foreign Service Reserve officers who are commissioned as diplomatic or consular officers, or both, in accordance with section 524 of the Foreign Service Act of 1946, as amended, notwithstanding the provisions of section 202(c)(1)(A) of the Annual and Sick Leave Act of 1951, as amended.

[PART E—MEDICAL SERVICES]

[EXPENSES OF TREATMENT]

[SEC. 941. (a) In the event an officer or employee of the Service who is a citizen of the United States incurs an illness or injury while such person is located abroad, which requires hospitalization or similar treatment, and which is not the result of vicious habits, intemperance, or misconduct on his part, the Secretary may, in accordance with such regulations as he may prescribe, pay for the cost of treatment of such illness or injury.

[(b) In the event a dependent of a United States citizen officer or employee of the Service who is stationed abroad, incurs an illness or injury while such dependent is located abroad, which requires hospitalization or similar treatment, and which is not the result of vicious habits, intemperance, or misconduct on his part, the Secretary may, in accordance with such regulations as he may prescribe, pay for that portion of the cost of treatment of each such illness or injury that exceeds \$35 up to a maximum limitation of one hundred and twenty days of treatment for each such illness or injury, except that such maximum

limitation shall not apply whenever the Secretary, on the basis of professional medical advice, shall determine that such illness or injury clearly is caused by the fact that such dependent is or has been located abroad.

[(c) After sufficient experience in the operation of the medical protection plan authorized in subsections (a) and (b) of this section has been obtained, as determined by the Secretary, and if he considers that the benefits so authorized can be provided for as well and as cheaply in other ways, the Secretary may, under such regulations, and for such persons, locations, and conditions as he may deem appropriate, and within the limits prescribed in such subsections, contract for medical care pursuant to such arrangements, insurance, medical services, or health plans as he may deem appropriate.

[TRAVEL FOR MEDICAL PURPOSES

[SEC. 942. In the event an officer or employee of the Service who is a citizen of the United States or one of his dependents, requires medical care, for illness or injury not the result of vicious habits, intemperance or misconduct, while stationed abroad in a locality where there is no qualified person or facility to provide such care, the Secretary may, in accordance with such regulations as he may prescribe, pay the travel expenses of such person by whatever means he shall deem appropriate, including the furnishing of transportation, and without regard to the Standardized Government Travel Regulations and section 10 of the Act of March 3, 1933, as amended (60 Stat. 808; 5 U.S.C. 73b), to the nearest locality where suitable medical care can be obtained. If any such officer, employee, or dependent is too ill to travel unattended, or in the case of a dependent too young to travel alone, the Secretary may also pay the round-trip travel expenses of an attendant or attendants.

[PHYSICAL EXAMINATIONS AND COSTS OF INOCULATIONS

[SEC. 943. The Secretary shall, under such regulations as he may prescribe, provide for physical examinations for applicants for employment and for officers and employees of the Service who are citizens of the United States, and for their dependents, including examinations necessary to establish disability or incapacity in accordance with the provisions of section 831, and shall provide for administering inoculations or vaccinations to such officers and employees and their dependents.

[SEC. 944. Under such regulations as he may prescribe, the Secretary is authorized to provide medical services under part E of this title beyond the date of death or separation of an officer or employee.

[FURNISHING MEDICAL SERVICES ABROAD

[SEC. 945. The Secretary may establish medical treatment and health care facilities and provide for the services of physicians, nurses, or other medical or health care personnel at a post at which, in the opinion of the Secretary, sufficient personnel are employed to warrant such facilities or services.

[TITLE X—MISCELLANEOUS

[PART A—PROHIBITIONS

[AGAINST UNIFORMS

[SEC. 1001. An officer or employee of the Service holding a position of responsibility in the Service shall not wear any uniform except such as may be authorized by law or such as a military commander may require civilians to wear in a theater of military operations.

[AGAINST ACCEPTING PRESENTS

[SEC. 1002. A chief of mission or other principal officer may, under such regulations as the President may prescribe, accept gifts made to the United States, or to any political subdivision thereof by the government to which he is accredited or from which he holds an exequatur.

[AGAINST ENGAGING IN BUSINESS ABROAD

[SEC. 1003. An officer or employee of the Service shall not, while holding office, transact or be interested in any business or engage for profit in any profession in the country or countries to which he is assigned abroad in his own name or in the name or through the agency of any other person, except as authorized by the Secretary.

[AGAINST CORRESPONDENCE ON AFFAIRS OF FOREIGN GOVERNMENTS

[SEC. 1004. (a) An officer or employee of the Service shall not correspond in regard to the public affairs of any foreign government except with the proper officers of the United States, except as authorized by the Secretary.

[(b) An officer or employee of the Service shall not recommend any person for employment in any position of trust or profit under the government of the country to which he is detailed or assigned, except as authorized by the Secretary.

[AGAINST POLITICAL, RACIAL, RELIGIOUS, OR COLOR DISCRIMINATION

[SEC. 1005. In carrying out the provisions of this Act, no political test shall be required and none shall be taken into consideration, nor shall there be any discrimination against any person on account of race, creed, or color.

[PART B—BONDS

[SEC. 1011. Every secretary, consul general, consul, vice consul, Foreign Service officer, and Foreign Service Reserve officer, and, if required, any other officer or employee of the Service or of the Department before he enters upon the duties of his office shall give to the United States a bond in such form and in such penal sum as the Secretary shall prescribe, with such sureties as the Secretary shall approve, conditioned without division of penalty for the true and faithful performance of his duties, including (but not by way of

limitation) certifying vouchers for payment, accounting for, paying over, and delivering up of all fees, moneys, goods, effects, books, records, papers, and other property that shall come to his hands or to the hands of any other person to his use as such officer or employee under any law now or hereafter enacted and for the true and faithful performance of all other duties now or hereafter lawfully imposed upon him as such officer or employee, and such bond shall be construed to be conditioned for the true and faithful performance of all official duties of whatever character now or hereafter lawfully imposed upon him, or by him assumed incident to his employment as an officer or employee of the Government. Notwithstanding any other provisions of law, upon approval of any bond given pursuant to this Act, the principal shall not be required to give another separate bond conditioned for the true and faithful performance of only a part of the duties for which the bond given pursuant to this Act is conditioned. The bond of an officer or employee of the Service shall be construed to be conditioned for the true and faithful performance of all acts of such officer incident to his office regardless of whether appointed or commissioned as diplomatic, consular. Foreign Service officer, or other officer of the Service. The bonds herein mentioned shall be deposited with the Secretary of the Treasury. Nothing herein contained shall be deemed to obviate the necessity of furnishing any bond which may be required pursuant to the provisions of the Subsistence Expense Act of 1926, as amended (44 Stat. 688; 47 Stat. 405; 56 Stat. 39; 5 U.S.C. 821-823, 827-833).

【PART C—GIFTS

【SEC. 1021. (a) The Secretary may accept on behalf of the United States gifts made unconditionally by will or otherwise for the benefit of the Department including the Service or for the carrying out of any of its functions. Conditional gifts may be so accepted at the discretion of the Secretary, and the principal of and income from any such conditional gift shall be held, invested, reinvested, and used in accordance with its conditions, but no gift shall be accepted which is conditioned upon any expenditure not to be met therefrom or from the income thereof unless such expenditure has been approved by Act of Congress.

【(b) Any unconditional gift of money accepted pursuant to the authority granted in paragraph (a) of this section, the net proceeds from the liquidation (pursuant to paragraph (c) or paragraph (d) of this section) of any other property so accepted, and the proceeds of insurance on any such gift property not used for its restoration, shall be deposited in the Treasury of the United States and are hereby appropriated and shall be held in trust by the Secretary of the Treasury for the benefit of the Department including the Service, and he may invest and reinvest such funds in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. Such gifts and the income from such investments shall be available for expenditure in the operation of the Department including the Service and the performance of its functions, subject to the same examination and audit as is provided for appropriations made for the Service by Congress.

[(c) The evidences of any unconditional gift of intangible personal property, other than money, accepted pursuant to the authority granted in paragraph (a) of this section, shall be deposited with the Secretary of the Treasury and he, in his discretion, may hold them, or liquidate them except that they shall be liquidated upon the request of the Secretary whenever necessary to meet payments required in the operation of the Department including the Service or the performance of its functions. The proceeds and income from any such property held by the Secretary of the Treasury shall be available for expenditures as is provided in paragraph (b) of this section.

[(d) The Secretary shall hold any real property or any tangible personal property accepted unconditionally pursuant to the authority granted in paragraph (a) of this section and he shall permit such property to be used for the operation of the Department including the Service and the performance of its functions or he may lease or hire such property, and may insure such property, and deposit the income thereof with the Secretary of the Treasury to be available for expenditure as provided in paragraph (b) of this section. The income from any such real property or tangible personal property shall be available for expenditure in the discretion of the Secretary for the maintenance, preservation, or repair and insurance of such property and any proceeds from insurance may be used to restore the property insured. Any such property when not required for the operation of the Department including the Service or the performance of its functions may be liquidated by the Secretary, and the proceeds thereof deposited with the Secretary of the Treasury, whenever in his judgment the purposes of the gifts will be served thereby.

[(e) For the purpose of Federal income, estate, and gift taxes, any gift, devise, or bequest accepted by the Secretary under authority of this Act shall be deemed to be a gift, devise, or bequest to or for the use of the United States.

[PART D—AUTHORIZATION TO RETAIN ATTORNEYS

[SEC. 1031. The Secretary may, without regard to sections 189 and 365 of the Revised Statutes (5 U.S.C. 49 and 314), authorize a principal officer to procure legal services whenever such services are required for the protection of the interests of the Government or to enable an officer or employee of the Service to carry on his work efficiently.

[PART E—DELEGATION OF AUTHORITY

[PART F—EXEMPTION FROM TAXATION

[SEC. 1051. Section 116 of the Internal Revenue Code, as amended (53 Stat. 48; 53 Stat. 575; 56 Stat. 842; 58 Stat. 46; 26 U.S.C. 116), relative to exclusions from gross income, is further amended by adding at the end thereof a new subsection to read as follows:

[(k) In the case of an officer or employee of the Foreign Service of the United States, amounts received by such officer or employee as allowances or otherwise under the terms of title IX of the Foreign Service Act of 1946.”

[PART G—INTERPRETATION OF THE ACT

[LIBERAL-CONSTRUCTION CLAUSE

[SEC. 1061. The provisions of this Act shall be construed liberally in order to effectuate its purpose.

[PROVISIONS THAT MAY BE HELD INVALID

[SEC. 1062. If any provision of this Act or the application of any such provision to any person or circumstance shall be held invalid, the validity of the remainder of the Act and the applicability of such provision to other persons or circumstances shall not be affected thereby.

[HEADINGS OF TITLES, PARTS, AND SECTIONS

[SEC. 1063. The headings descriptive of the various titles, parts, and sections of this Act are inserted for convenience only, and, in case of any conflict between any such heading and the substance of the title, part, or section to which it relates, the heading shall be disregarded.

[PROVISIONS OF THE ACT OF JULY 3, 1946

[SEC. 1064. Nothing in this Act shall be construed to affect the provisions of sections 1, 2, 3, and 4 of the Act of July 3, 1946 (Public Law 488, Seventy-ninth Congress). The "classified grades" within the meaning of that Act shall, from and after the effective date of this Act, be construed to mean classes 1 to 5, inclusive.

[PART H—AUTHORIZATION FOR APPROPRIATIONS

[SEC. 1071. Appropriations to carry out the purposes of this Act are hereby authorized.

[PART I—EDUCATIONAL FACILITIES

[SEC. 1081. Whenever the Secretary determines that educational facilities are not available, or that existing educational facilities are inadequate, to meet the needs of children of American citizens stationed outside the United States engaged in carrying out Government activities, he is authorized, in such manner as he deems appropriate and under such regulations as he may prescribe, to establish, operate, and maintain primary schools, and school dormitories and related educational facilities for primary and secondary schools, outside the United States, or to make grants of funds for such purposes, or otherwise provide for such educational facilities. The provisions of the Foreign Service Buildings Act, 1926, as amended, and of paragraphs (h) and (i) of section 3 of the Act entitled "An Act to provide certain basic authority for the Department of State", approved August 1, 1956 (5 U.S.C., 170h(h) and 170h(i)), may be utilized by the Secretary in providing assistance for educational facilities. Assistance may include, but shall not be limited to, hiring, transporting, and payment of teachers and other necessary personnel.

[PART J—MALPRACTICE PROTECTION

[SEC. 1091. (a) The remedy—

[(1) against the United States provided by sections 1346(b) and 2672 of title 28 of the United States Code, or

[(2) through proceedings for compensation or other benefits from the United States as provided by any other law, where the availability of such benefits precludes a remedy under such sections,

for damages for personal injury, including death, allegedly arising from malpractice or negligence of a physician, dentist, nurse, pharmacist, or paramedical (including medical and dental assistants and technicians, nursing assistants, and therapists) or other supporting personnel of the Department of State (including the Agency for International Development) in furnishing medical care or related services, including the conducting of clinical studies or investigations, while in the exercise of his or her duties in or for the Department of State or any other Federal department, agency, or instrumentality shall be exclusive of any other civil action or proceeding by reason of the same subject matter against such physician, dentist, nurse, pharmacist, or paramedical or other supporting personnel (or his or her estate) whose act or omission gave rise to such claim.

[(b) The United States Government shall defend any civil action or proceeding brought in any court against any person referred to in subsection (a) of this section (or his or her estate) for any such damage or injury. Any such person against whom such civil action or proceeding is brought shall deliver, within such time after date of service or knowledge of service as determined by the Attorney General, all process served upon him or her on an attested true copy thereof to whomever was designated by the Secretary to receive such papers and such person shall promptly furnish copies of the pleading and process therein to the United States attorney for the district embracing the place wherein the proceeding is brought, to the Attorney General, and to the Secretary.

[(c) Upon a certification by the Attorney General that the defendant was acting within the scope of his or her employment in or for the Department of State or any other Federal department, agency, or instrumentality at the time of the incident out of which the suit arose, any such civil action or proceeding commenced in a State court shall be removed without bond at any time before trial by the Attorney General to the district court of the United States of the district and division embracing the place wherein it is pending and the proceeding deemed a tort action brought against the United States under the provisions of title 28 of the United States Code and all references thereto. Should a United States district court determine on a hearing on a motion to remand held before a trial on the merits that the case so removed is one in which a remedy by suit within the meaning of subsection (a) of this section is not available against the United States, the case shall be remanded to the State court except that where such remedy is precluded because of the availability of a remedy through proceedings for compensation or other benefits from the United States as provided by any other law, the case shall be dismissed, but in that event, the running of any limitation of time for commencing, or filing

an application or claim in, such proceedings for compensation or other benefits shall be deemed to have been suspended during the pendency of the civil action or proceeding under this section.

[(d) The Attorney General may compromise or settle any claim asserted in such civil action or proceeding in the manner provided in section 2677 of title 28 of the United States Code and with the same effect.

[(e) For purposes of this section, the provisions of section 2680(h) of title 28 of the United States Code shall not apply to any tort enumerated therein arising out of negligence in the furnishing of medical care or related services, including the conducting of clinical studies or investigations.

[(f) The Secretary may, to the extent he deems appropriate, hold harmless or provide liability insurance for any person to whom the immunity provisions of subsection (a) of this section apply, for damages for personal injury, including death, negligently caused by any such person while acting within the scope of his or her office or employment and as a result of the furnishing of medical care or related services, including the conducting of clinical studies or investigations, if such person is assigned to a foreign area or detailed for service with other than a Federal agency or institution, or if the circumstances are such as are likely to preclude the remedies of third persons against the United States provided by sections 1346(b) and 2672 of title 28 of the United States Code, for such damage or injury.

[(g) For purposes of this section, any medical care or related service covered by this section and performed abroad by a covered person at the direction or with the approval of the United States Ambassador or other principal representative of the United States in the area shall be deemed to be within the scope of employment of the individual performing the service.

[TITLE XI—TEMPORARY PROVISIONS

[PART A—TEMPORARY PROVISIONS CONCERNING APPOINTMENTS AND SALARIES OF OFFICERS AND EMPLOYEES OF THE SERVICE

[REINSTATEMENT OF CHIEFS OF MISSION WHO ARE FORMER FOREIGN SERVICE OFFICERS

[SEC. 1101. Any person who on the effective date of this Act is a chief of mission and who has previously been a Foreign Service officer may be reinstated as a Foreign Service officer in the class of career minister.

[TRANSFER OF FOREIGN SERVICE OFFICERS FROM OLD CLASSES TO NEW CLASSES

[SEC. 1102. (a) Foreign Service officers on active service on the effective date of this Act shall, by virtue of this Act, be transferred from the classes in which they are serving on such date to the new classes established by this Act as follows: Officers of class I to the new class 1; officers of class II to the new class 2; officers of classes III and IV to the new class 3; officers of classes V and VI to the new class 4; officers

of classes VII and VIII to the new class 5; officers in the unclassified grade to the new class 6.

[(b) Each officer so transferred shall under such regulations as the Secretary may prescribe receive that salary in the new class which shall as nearly as possible correspond to his relative standing in the Service.

[(c) Whenever, in accordance with the provisions of paragraph (a) of this section, the officers in a new class shall be officers who previously served in two former classes that were combined to form the new class, the period of minimum service in class, for the purposes of determining eligibility for promotion in accordance with the provisions of section 622, shall commence to run from the date of their promotion to the lower of the two classes from which the new class is composed and from the date of their promotion to the higher of the two classes from which the new class is composed for the purposes of computing the minimum period an officer shall serve in a class before the commencement of the period during which he must obtain a promotion in order to prevent being retired. In all other cases, service in a former class shall be considered as a constituting service in the new class for the purposes of section 622.

[TRANSFER OF OTHER OFFICERS AND EMPLOYEES OF THE SERVICE FROM THEIR PRESENT POSITIONS TO NEW POSITIONS]

[SEC. 1103. The Secretary shall, under such regulations as he may prescribe, provide for the transfer of the personnel of the Service, other than persons occupying positions which under the terms of this Act constitute them chiefs of mission and Foreign Service officers, to corresponding positions established by the terms of this Act or by any regulations issued pursuant thereto.

[IN-CLASS PROMOTION]

[SEC. 1104. In making transfers of personnel in accordance with the provisions of sections 1102 and 1103, credit for time served in a previous class or position shall be given for the purpose of determining eligibility for in-class promotions in a new class in the same manner as if such time had been served in the new class.

[RULES GOVERNING THE MAKING OF SALARY DETERMINATIONS IN CARRYING OUT AN INITIAL CLASSIFICATION OF THE SERVICE]

[SEC. 1105. In making the initial classification of the Service for Foreign Service staff officers and employees in accordance with the provisions of sections 441 and 442, the following rules shall apply:

[(1) The principle of equal compensation for equal work, irrespective of sex, shall be followed.

[(2) If an officer or employee is receiving basic salary at less than the minimum rate of the class or subclass to which the position he holds is allocated, his salary shall be increased to the lowest basic salary of that class or subclass.

[(3) If an officer or employee is receiving basic salary within the range provided for the class or subclass to which the position he holds

is allocated, and at one of the rates within that range, no change shall be made in his basic salary; if his basic salary rate is within the range but does not correspond to any one of the rates prescribed for that range by section 415, his salary shall be adjusted by fixing it at the next higher rate above the rate which he is receiving.

[(4) If an officer or employee is receiving basic salary at a rate in excess of the maximum basic salary rate provided by section 415 for the class or subclass to which the position he holds is allocated in accordance with the provisions of section 1103, he shall not suffer a diminution in salary as a consequence of the classification of the position which he holds so long as he continues to occupy that position, but if he is not receiving salary at one of the rate prescribed in section 415, his salary shall be adjusted by fixing it at the next higher rate above the rate he is receiving.]

[PART B—TEMPORARY PROVISIONS CONCERNING RETIREMENT

[MANDATORY RETIREMENT

[SEC. 1111. (a) Notwithstanding the provisions of section 632, regarding the retirement of Foreign Service officers at the age of sixty years, Foreign Service officers below the class of career minister shall, during the first year after the effective date of this Act, be mandatorily retired for age upon reaching the age of sixty-four unless their services have been extended in accordance with the provisions of section 632; during the second year, at age sixty-three; during the third year at age sixty-two; during the fourth year at age sixty-one; and, thereafter, at age sixty, but in no event shall any Foreign Service officer be mandatorily retired for age during such four-year period until he has had fifteen years of service.]

[(b) No Foreign Service officer shall be mandatorily retired in accordance with provisions of section 633 or 634 until three years after the effective date of this Act.]

[RATE OF ANNUITIES TO BE RECOMPUTED

[SEC. 1112. The Secretary shall cause annuities of all persons who are receiving annuities from the Foreign Service Retirement and Disability Fund on the effective date of this Act to be recomputed in accordance with the provisions of section 821(a) and annuities payable to such persons shall, commencing on the effective date of this Act, be paid at the rates so determined, but no such recomputation or any other action taken pursuant to this Act shall operate to reduce the rate of the annuity received by any such person unless such person voluntarily elects to receive a reduced annuity as provided in section 821(c).]

[PART C—MISCELLANEOUS TEMPORARY PROVISIONS

[BONDS

[SEC. 1121. The provisions of this Act shall not operate to impair the validity of any existing bond furnished by any officer or employee of the Service.]

[USE OF APPROPRIATIONS

[SEC. 1122. Funds appropriated to the Department of State for the fiscal year 1947, under the caption "Foreign Service", are hereby made available for the purposes of this Act in accordance with authority granted herein and such regulations as the Secretary may prescribe. The appropriation of such additional funds as may be required to carry out the provisions of this Act is hereby authorized.

[PART D—REPEAL CLAUSES

[REPEAL OF PARTICULAR STATUTES

[SEC. 1131. The following statutes or parts of statutes are hereby repealed:

[(1) Section 208 of the Revised Statutes, as amended by the Act of May 29, 1928 (ch. 901, Public Law Numbered 611, 45 Stat. 987) (5 U.S.C. 163).

[(2) Section 1674 of the Revised Statutes, as amended by section 6 of the Act of February 5, 1915 (ch. 23, Public Law Numbered 242, 38 Stat. 806), and as further amended by the Act of March 3, 1875 (ch. 153, 18 Stat. 483), and by that part of the Act of July 1, 1916 (ch. 208, Public Law Numbered 131, 39 Stat. 252), which constitutes the second proviso under the heading "Salaries of Secretaries in the Diplomatic Service" (22 U.S.C. 40 and 51).

[(3) Section 1675 of the Revised Statutes as amended by the Act of March 3, 1875 (ch. 153, 18 Stat. 483), and by that part of title I of the Act of February 27, 1925 (ch. 364, Public Law Numbered 502, 43 Stat. 1015), under the heading "Diplomatic and Consular Service" and the subheading "Ambassadors and Ministers" (22 U.S.C. 32).

[(4) Section 1685 of the Revised Statutes as amended by schedule A of the Act of March 2, 1909 (ch. 235, Public Law Numbered 292, 35 Stat. 673), and as further amended by section 3 of the Act of February 5, 1915 (ch. 23, Public Law Numbered 242, 38 Stat. 805), section 17 of the Act of May 24, 1924 (ch. 182, Public Law Numbered 135, 43 Stat. 143), hereinafter referred to as the Act of May 24, 1924, and by that part of title I of the Act of February 27, 1925 (ch. 364, Public Law Numbered 502, 43 Stat. 1016), which reads as follows: "*Provided*, That after June 30, 1924, vice consuls while in charge of a consulate general or consulate during the absence of the principal officer shall be entitled to additional compensation in the same manner and under the same conditions as Foreign Service officers as provided in section 17 of the Act of May 24, 1924," renumbered as section 25 and further amended by section 7 of the Act of February 23, 1931 (ch. 276, Public Law Numbered 715, 46 Stat. 1210), hereinafter referred to as the Act of February 23, 1931 (22 U.S.C. 20).

[(5) Section 1686 of the Revised Statutes (22 U.S.C. 36).

[(6) Section 1688 of the Revised Statutes (22 U.S.C. 39).

[(7) Section 1695 of the Revised Statutes and section 3 of the Act of April 5, 1906 (ch. 1366, Public Law Numbered 83, 34 Stat. 100), which reenacted certain parts of section 1695 of the Revised Statutes without specifically amending such section (22 U.S.C. 51a and 55).

[(8) Section 1696 of the Revised Statutes (22 U.S.C. 58).

[(9) Section 1712 of the Revised Statutes, as amended by the Act of June 18, 1888 (ch. 393, 25 Stat. 186) (22 U.S.C. 80).

[(10) Section 1713 of the Revised Statutes, as amended by the Act of June 18, 1888 (ch. 393, 25 Stat. 186) (22 U.S.C. 82).

[(11) Section 1714 of the Revised Statutes (22 U.S.C. 71).

[(12) Section 1738 of the Revised Statutes (22 U.S.C. 105).

[(13) Section 1740 of the Revised Statutes (22 U.S.C. 121).

[(14) Section 1743 of the Revised Statutes (22 U.S.C. 125).

[(15) Section 1744 of the Revised Statutes (22 U.S.C. 33).

[(16) Section 1748 of the Revised Statutes (22 U.S.C. 129).

[(17) Section 1749 of the Revised Statutes (22 U.S.C. 130).

[(18) Section 1752 of the Revised Statutes (22 U.S.C. 132).

[(19) That part of section 1 of the Act of June 11, 1874 (ch. 275, 18 Stat. 67), which reads as follows: "And the Secretary of State is authorized to allow and pay to the secretary of legation and to the second secretary of legation and to the messenger of the legation in Paris, from the moneys collected at the legation for the transmission of consular invoices, an amount not to exceed in the aggregate six hundred dollars in any one year, to be divided and distributed as the Secretary of State may direct, provided that the surplus receipts are sufficient for that purpose" (22 U.S.C. 37).

[(20) Section 4 of the Act of June 11, 1874 (ch. 275, 18 Stat. 70) (22 U.S.C. 122).

[(21) The Act of June 17, 1974 (ch. 294, 18 Stat. 77) (22 U.S.C. 124 and 126).

[(22) That part of the Act of January 27, 1879 (ch. 28, 20 Stat. 273), which reads as follows: "And it shall be the duty of consuls to make to the Secretary of State a quarterly statement of exports from, and imports to, the different places to which they are accredited, giving, as near as may be, the market price of the various articles of exports and imports, the duty and port charges, if any, on articles imported and exported, together with such general information as they may be able to obtain as to how, where, and through what channels a market may be opened for American products and manufactures. In addition to the duties now imposed by law, it shall be the duty of consuls and commercial agents of the United States, annually, to procure and transmit to the Department of State, as far as practicable, information respecting the rate of wages paid for skilled and unskilled labor within their respective jurisdiction" (22 U.S.C. 81).

[(23) That part of section 5 of the Act of February 14, 1903 (ch. 552, Public Law Numbered 87, 32 Stat. 827), reading as follows: "And all consular officers of the United States, including consuls-general, consuls, and commercial agents, are hereby required, and it is made a part of their duty, under the direction of the Secretary of State, to gather and compile, from time to time, useful and material information and statistics in respect to the subjects enumerated in section 3 of this Act in the countries and places to which such consular officers are accredited, and to send under the direction of the Secretary of State, reports as required by the Secretary of Commerce and Labor of the information and statistics thus gathered and compiled, such reports to be transmitted through the Department of State to the Secretary of the Department of Commerce and Labor," as amended by

section 3 of the Act of April 5, 1906 (ch. 1366, Public Law Numbered 83, 34 Stat. 100); by the Act of August 23, 1912 (ch. 350, Public Law Numbered 299, 37 Stat. 407), and by the Act of March 4, 1913 (ch. 141, Public Law Numbered 426, 37 Stat. 736) (15 U.S.C. 175).

[(24) Section 11 of the Act of February 14, 1903 (ch. 552, Public Law Numbered 87, 32 Stat. 830) (5 U.S.C. 162).

[(25) Section 4 of the Act of April 5, 1906 (ch. 1366, Public Law Numbered 83, 34 Stat. 100), as amended by section 10 of the Act of May 24, 1924 (43 Stat. 142), and renumbered as section 17 and further amended by section 7 of the Act of February 23, 1931 (46 Stat. 1209) (22 U.S.C. 9).

[(26) That part of section 8 of the Act of April 5, 1906 (ch. 1366, Public Law Numbered 83, 34 Stat. 101), reading as follows: "but this shall not apply to consular agents, who shall be paid by one-half of the fees received in their offices, up to maximum sum of one thousand dollars in any one year, the other half being accounted for and paid into the Treasury of the United States" (22 U.S.C. 99).

[(27) That part of schedule A of the Act of March 2, 1909 (ch. 235, Public Law Numbered 292; 35 Stat. 672), which reads as follows: "And hereafter no new ambassadorship shall be created unless the same shall be provided for by Act of Congress." (22 U.S.C. 31).

[(28) Section 7 of the Act of February 5, 1915 (ch. 23, Public Law Numbered 242, 38 Stat. 807), as amended by section 12 of the Act of May 3, 1945 (ch. 105, Public Law Numbered 48; 59 Stat. 105), hereinafter referred to as the Act of May 3, 1945 (22 U.S.C. 38).

[(29) That part of the Act of July 1, 1916, which, under the heading "Salaries of Secretaries in the Diplomatic Service," authorizes the President to designate and assign any secretary of class one as counselor of embassy or legation (39 Stat. 252), as amended by section 16 of the Act of May 24, 1924 (43 Stat. 143), and renumbered as section 23 by section 7 of the Act of February 23, 1931 (46 Stat. 1210) (22 U.S.C. 18).

[(30) The Joint Resolution of September 29, 1919 (ch. 72, Public Resolution Numbered 16, 41 Stat. 291) (22 U.S.C. 34).

[(31) That part of the Act of June 1, 1922 (ch. 204, Public Law Numbered 229, 42 Stat. 600), which under the heading "Diplomatic and Consular Service" and subheading "Ambassadors and Ministers" in title I authorizes the appointment of an envoy extraordinary and minister plenipotentiary to Egypt (22 U.S.C. 34c).

[(32) Section 1 of the Act of May 24, 1924 (43 Stat. 140), renumbered as section 8 by section 7 of the Act of February 23, 1931 (46 Stat. 1207) (22 U.S.C. 1).

[(33) Section 2 of the Act of May 24, 1924 (43 Stat. 140), renumbered as section 9 and amended by section 7 of the Act of February 23, 1931 (46 Stat. 1207) (22 U.S.C. 2).

[(34) Section 3 of the Act of May 24, 1924 (43 Stat. 140), renumbered as section 10 and amended by section 7 of the Act of February 23, 1931 (46 Stat. 1207), and as further amended by section 2 of the Act of April 24, 1939 (ch. 84, Public Law Numbered 40, 53 Stat. 583), and by sections 4 and 5 of the Act of May 3, 1945 (59 Stat. 102, 103) (22 U.S.C. 3).

[(35) Section 4 of the Act of May 24, 1924 (43 Stat. 140), renumbered as section 11 and amended by section 7 of the Act of February

23, 1931 (46 Stat. 1215), and as further amended by the Act of June 29, 1935 (ch. 337, Public Law Numbered 181, 49 Stat. 436) (22 U.S.C. 4).

[(36) Section 5 of the Act of May 24, 1924 (43 Stat. 141), renumbered as section 12 and amended by section 7 of the Act of February 23, 1931 (46 Stat. 1208) (22 U.S.C. 5 and 6).

[(37) Section 6 of the Act of May 24, 1924, renumbered as sections 13 and 14, and amended by section 7 of the Act of February 23, 1931, and as further amended by section 6 of the Act of May 3, 1945 (59 Stat. 103) (22 U.S.C. 7).

[(38) Section 9 of the Act of May 24, 1924 (43 Stat. 142), renumbered as section 16 and amended by section 7 of the Act of February 23, 1931 (46 Stat. 1208), and further amended by section 7 of the Act of May 3, 1945 (59 Stat. 103) (22 U.S.C. 11).

[(39) Section 12 of the Act of May 24, 1924 (43 Stat. 142), renumbered as section 19 and amended by section 7 of the Act of February 23, 1931 (46 Stat. 1209), and further amended by section 8 of the Act of May 3, 1945 (59 Stat. 104) (22 U.S.C. 12).

[(40) Section 13 of the Act of May 24, 1924 (43 Stat. 143), renumbered as section 20 and amended by section 7 of the Act of February 23, 1931 (46 Stat. 1209) (22 U.S.C. 14).

[(41) Section 14 of the Act of May 24, 1924 (43 Stat. 143), renumbered as section 21 and amended by section 7 of the Act of February 23, 1931 (46 Stat. 1209), and further amended by section 9 of the Act of May 3, 1945 (59 Stat. 103) (22 U.S.C. 11).

[(42) Section 15 of the Act of May 24, 1924 (43 Stat. 143), renumbered as section 22 and amended by section 7 of the Act of February 23, 1931 (46 Stat. 1210), and further amended by the Act of March 17, 1941 (ch. 20, Public Law Numbered 17, 55 Stat. 44) (22 U.S.C. 17 and 17a).

[(43) Paragraph 1 of section 17 of the Act of May 24, 1924 (43 Stat. 143), renumbered as section 24 and amended by section 7 of the Act of February 23, 1931 (46 Stat. 1210) (22 U.S.C. 19).

[(44) Section 18 of the Act of May 24, 1924 (43 Stat. 144), as amended by section 1 of the Act of July 3, 1926 (ch. 798, Public Law Numbered 519, 44 Stat. 902), renumbered as section 26 and amended by section 7 of the Act of February 23, 1931 (46 Stat. 1211), further amended by section 3 of the Act of April 24, 1939 (ch. 84, Public Law Numbered 40, 53 Stat. 584), by the Act of July 19, 1939 (ch. 330, Public Law Numbered 197, 53 Stat. 1067), by the Act of August 5, 1939 (ch. 441, Public Law Numbered 277, 53 Stat. 1208), by section 1 of the Act of April 20, 1940 (ch. 118, Public Law Numbered 464, 54 Stat. 143), by section 4 of the Act of October 14, 1940 (ch. 859, Public Law Numbered 846, 54 Stat. 1118) and by section 1 of the Act of May 13, 1941 (ch. 115, Public Law Numbered 69, 55 Stat. 189) (22 U.S.C. 21).

[(45) Section 19 of the Act of May 24, 1924 (43 Stat. 146), renumbered as section 27 by section 7 of the Act of February 23, 1931 (46 Stat. 1213) (22 U.S.C. 22).

[(46) Section 20 of the Act of May 24, 1924 (43 Stat. 146), renumbered as section 28 and amended by section 7 of the Act of February 23, 1931 (46 Stat. 1213) (22 U.S.C. 23).

[(47) Section 31 of the Act of May 24, 1924, as added to that Act by section 7 of the Act of February 23, 1931 (46 Stat. 1214), and as amended by section 10 of the Act of May 3, 1945 (59 Stat. 105) (22 U.S.C. 23f and 23g).

[(48) Section 32 of the Act of May 24, 1924, as added to that Act by section 7 of the Act of February 23, 1931 (46 Stat. 1214), and as amended by section 5 of the Act of July 3, 1946 (Public Law 488, Seventy-ninth Congress) (22 U.S.C. 23h).

[(49) Section 33 of the Act of May 24, 1924, as added to that Act by section 7 of the Act of February 23, 1931 (46 Stat. 1215), and as amended by section 4 of the Act of April 24, 1939 (ch. 84, Public Law Numbered 40, 53 Stat. 588) (22 U.S.C. 3a and 23i).

[(50) Section 34 of the Act of May 24, 1924, as added to that Act by section 7 of the Act of February 23, 1931 (46 Stat. 1216) (22 U.S.C. 23j).

[(51) That part of the Act of February 27, 1925 (ch. 364, Public Law Numbered 502, 43 Stat. 1017), which under the heading "Diplomatic and Consular Service" and the subheading "Allowance for Clerk Hire at United States Consulates" reads as follows: "Clerks, whenever hereafter appointed, shall so far as possible, be appointed under civil service rules and regulations", and similar provisions in later Acts (22 U.S.C. 56).

[(52) That part of the Act of February 27, 1925 (ch. 364, Public Law Numbered 502, 43 Stat. 1016), which under the heading "Diplomatic Service" and the subheading "Clerks at Embassies and Legations", reads as follows: "who (clerks at the embassies and legations) whenever hereafter appointed shall be citizens of the United States * * * and so far as practicable shall be appointed under civil service rules and regulations", and similar provisions in later Acts (22 U.S.C. 35).

[(53) Section 2 of the Act of July 3, 1926 (ch. 798, Public Law Numbered 519, 44 Stat. 903) (22 U.S.C. 21a).

[(54) Sections 1, 2, 3, 4, 5, and 7 of this Act of March 3, 1927 (ch. 365, Public Law Numbered 768, 44 Stat. 1394) as amended by the Act of April 12, 1930 (ch. 142, Public Law Numbered 122, 46 Stat. 163) (15 U.S.C. 197-197d and 197f).

[(55) The Joint Resolution of January 22, 1930 (ch. 22, Public Resolution Numbered 32, 46 Stat. 57) (22 U.S.C. 34a).

[(56) The Act of June 5, 1930 (ch. 399, Public Law Numbered 304, 46 Stat. 497-499) (7 U.S.C. 541-545).

[(57) The Joint Resolution of June 5, 1930 (ch. 404, Public Resolution Numbered 81, 46 Stat. 502) (22 U.S.C. 34b).

[(58) The Act of January 21, 1931 (ch. 42, Public Law Numbered 569, 46 Stat. 1040) (22 U.S.C. 32a).

[(59) Section 1 of the Act of February 23, 1931 (46 Stat. 1207), as amended by section 2 of the Act of May 3, 1945 (59 Stat. 102) (22 U.S.C. 23a).

[(60) Section 2 of the Act of February 23, 1931 (46 Stat. 1207) (22 U.S.C. 23b).

[(61) Section 3 of the Act of February 23, 1931 (46 Stat. 1207), as amended by section 1 of the Act of April 24, 1939 (ch. 84, Public Law Numbered 40, 53 Stat. 583), and as further amended by section 3 of the Act of May 3, 1945 (59 Stat. 102) (22 U.S.C. 23c).

[(62) Section 4 of the Act of February 23, 1931 (46 Stat. 1207) (22 U.S.C. 23d).]

[(63) Section 5 of the Act of February 23, 1931 (46 Stat. 1207) (22 U.S.C. 23e).]

[(64) That part of section 209 of the Act of June 30, 1932 (ch. 314, Public Law Numbered 212, 47 Stat. 405), as amended, which was added to that Act by the Act of April 30, 1940 (ch. 172, Public Law Numbered 499, 54 Stat. 174) (5 U.S.C. 823a).]

[(65) That part of Reorganization Plan Numbered II, made effective July 1, 1939, by the Act of June 7, 1939 (ch. 193, Public Resolution Numbered 20, 53 Stat. 813), designated as subparagraphs (a), (b), and (c) under section 1 of part 1 (53 Stat. 1431) (note under 5 U.S.C. 133t).]

[(66) Section 1 of the Act of May 3, 1945 (59 Stat. 102) (22 U.S.C. 1a).]

[(67) Section 12 of the Act of May 3, 1945 (59 Stat. 105) (22 U.S.C. 24).]

[GENERAL REPEAL OR AMENDMENT PROVISION

[SEC. 1132. Any statute that is not repealed by section 1131 but which is inconsistent with any of the provisions of this Act shall be considered as having been amended or superseded by such provisions.]

[RIGHTS AND LIABILITIES UNDER STATUTES THAT ARE REPEALED

[SEC. 1133. The repeal of the several statutes or parts of statutes accomplished by section 1131 shall not affect any act done or right accruing or accrued, or any suit or proceeding had or commenced in any civil cause, before such repeal, but all rights and liabilities under the statutes or parts thereof so repealed shall continue, and may be enforced in the same manner as if such repeal had not been made; subject, however, to the provisions of section 1134.]

[STATUTES PREVIOUSLY REPEALED BY IMPLICATION

[SEC. 1134. The repeal of the several statutes or parts of statutes accomplished by section 1131 shall not be construed as a revival, up to the effective date of this Act, of any statute or part of a statute that may have previously been repealed by implication.]

[CONTINUATION IN FORCE OF EXISTING RULES, REGULATIONS, AND EXECUTIVE ORDERS

[SEC. 1135. Notwithstanding the provisions of this Act, existing rules, regulations of or applicable to the Service, and Executive orders shall remain in effect until revoked or rescinded or until modified or superseded by regulations made in accordance with the provisions of this Act, unless clearly inconsistent with the provisions of this Act.]

[PART E—EFFECTIVE DATE OF ACT

[SEC. 1141. The effective date of this Act shall be three months following the date of its enactment.]

THE ACT OF AUGUST 1, 1956

AN ACT To provide certain basic authority for the Department of State

* * * * *

SEC. 13. (a) There is hereby established a working capital fund for the Department of State, which shall be available without fiscal year limitations, for expenses (including those authorized by the [Foreign Service Act of 1946, as amended] *Foreign Service Act of 1980*) and equipment, necessary for maintenance and operation in the city of Washington and elsewhere of (1) central reproduction, editorial, data processing, audiovisual, library and administrative support services; (2) central services for supplies and equipment (including repairs); (3) such other administrative services as the Secretary, with the approval of the Bureau of the Budget, determines may be performed more advantageously and more economically as central services; and (4) medical and health care services. The capital of the fund shall consist of the amount of the fair and reasonable value of such supply inventories, equipment, and other assets and inventories on order, pertaining to the services to be carried on by the fund, as the Secretary may transfer to the fund, less the related liabilities and unpaid obligations, together with any appropriations made for the purpose of providing capital. The fund shall be reimbursed, or credited with advance payments, from applicable appropriations and funds of the Department of State, other Federal agencies, and other sources authorized by law, for supplies and services at rates which will approximate the expense of operations, including accrual of annual leave and depreciation of plant and equipment of the fund. The fund shall also be credited with other receipts from sale or exchange of property or in payment for loss or damage to property held by the fund. There shall be transferred into the Treasury as miscellaneous receipts, as of the close of each fiscal year, earnings which the Secretary determines to be excess to the needs of the fund.

* * * * *

[SEC. 14. (a) Subject to the provisions of this section and under such regulations as the Secretary of State may prescribe, the Secretary is authorized to provide for payment of a gratuity to the surviving dependents of any Foreign Service employee who dies as a result of injuries sustained in the performance of duty outside the United States in an amount equal to one year's salary at the time of death. Appropriations for this purpose are authorized to be made to the account for salaries and expenses of the employing agency. Any death gratuity payment made under this section shall be held to have been a gift and shall be in addition to any other benefit payable from any source.

[(b) A death gratuity payment shall be made under this section only if the survivor entitled to payment under subsection (c) is entitled to elect monthly compensation under section 8133 of title 5, United States Code, because the death resulted from an injury (excluding a disease proximately caused by the employment) sustained in the performance of duty, without regard to whether such survivor elects to waive compensation under such section 8133.

[(c) A death gratuity payment under this section shall be made as follows:

[(1) First, to the widow or widower.

[(2) Second, to the child, or children in equal shares, if there is no widow or widower.

[(3) Third, to the dependent parent, or dependent parents in equal shares, if there is no widow, widower, or child.

If there is no survivor entitled to payment under this subsection, no payment shall be made.

[(d) As used in this section—

[(1) the term "Foreign Service employee" means any employee of the United States who is a chief of mission, a Foreign Service officer, a Foreign Service information officer, a Foreign Service Reserve officer of limited or unlimited tenure, a Foreign Service staff officer or employee, a consular agent, a United States representative to an international organization or commission, or an alien employee appointed under section 541 of the Foreign Service Act of 1946;

[(2) each of the terms "widow", "widower", "child", and "parents" shall have the same meaning given each such term by section 8101 of title 5, United States Code; and

[(3) the term "United States" means the several States and the District of Columbia.

[(e) The provisions of this section apply with respect to death occurring on and after January 1, 1973.]

* * * * *
[Sec. 16. Under the direction of the President—

[(1) the United States chief of mission (as defined in section 121(9) of the Foreign Service Act of 1946) in a foreign country shall have full responsibility for the direction, coordination, and supervision of all United States Government officers and employees in that country, except for personnel under the command of a United States area military commander;

[(2) the chief of mission shall keep himself fully and currently informed with respect to all activities and operations of the United States Government within that country, and shall insure that all Government officers and employees in that country, except for personnel under the command of a United States area military commander, comply fully with his directives; and

[(3) any department or agency having officers or employees in a country shall keep the United States chief of mission in that country fully and currently informed with respect to all activities and operations of its officers and employees in that country, and shall insure that all of its officers and employees, except for personnel under the command of a United States area military commander, comply fully with all applicable directives of the chief of mission.]

* * * * *
Sec. 25. (a) The Secretary of State may accept on behalf of the United States gifts made unconditionally by will or otherwise for the benefit of the Department of State (including the Foreign Service)

or for the carrying out of any of its functions. Conditional gifts may be so accepted at the discretion of the Secretary, and the principal of and income from any such conditional gift shall be held, invested, reinvested, and used in accordance with its conditions, except that no gift shall be accepted which is conditioned upon any expenditure which will not be met by the gift or the income from the gift unless such expenditure has been approved by Act of Congress.

(b) Any unconditional gift of money accepted under subsection (a), the income from any gift property held under subsection (c) or (d) (except income made available for expenditure under subsection (d) (2)), the net proceeds from the liquidation of gift property under subsection (c) or (d), and the proceeds of insurance on any gift property which are not used for its restoration, shall be deposited in the Treasury of the United States. Such funds are hereby appropriated and shall be held in trust by the Secretary of the Treasury for the benefit of the Department of State (including the Foreign Service). The Secretary of the Treasury may invest and reinvest such funds in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. Such funds and the income from such investments shall be available for expenditure in the operation of the Department of State (including the Foreign Service) and the performance of its functions, subject to the same examination and audit as is provided for appropriations made for the Foreign Service by the Congress.

(c) The evidences of any unconditional gift of intangible personal property (other than money) accepted under subsection (a), shall be deposited with the Secretary of the Treasury who may hold or liquidate them, except that they shall be liquidated upon the request of the Secretary of State whenever necessary to meet payments required in the operation of the Department of State (including the Foreign Service) or the performance of its functions.

(d) (1) The Secretary of State shall hold any real property or any tangible personal property accepted unconditionally pursuant to subsection (a) and shall either use such property for the operation of the Department of State (including the Foreign Service) and the performance of its functions or lease or hire such property, except that any such property not required for the operation of the Department of State (including the Foreign Service) or the performance of its functions may be liquidated by the Secretary of State whenever in the judgment of the Secretary of State the purposes of the gift will be served thereby. The Secretary of State may insure any property held under this subsection. Except as provided in paragraph (2), the Secretary shall deposit the income from any property held under this subsection with the Secretary of the Treasury as provided in subsection (b).

(2) The income from any real property or tangible personal property held under this subsection shall be available for expenditure at the discretion of the Secretary of State for the maintenance, preservation, or repair and insurance of such property and any proceeds from insurance may be used to restore the property insured.

(e) For the purpose of Federal income, estate, and gift taxes, any gift, devise, or bequest accepted under this section shall be deemed to be a gift, devise, or bequest to and for the use of the United States.

(f) *The authorities available to the Secretary of State under this section with respect to the Department of State shall be available to the Director of the International Communication Agency and the Director of the United States International Development Cooperation Agency with respect to their respective agencies.*

SEC. 26. (a) *The Secretary of State may, without regard to section 3106 of title 5, United States Code, authorize a principal officer of the Foreign Service to procure legal services whenever such services are required for the protection of the interests of the Government or to enable a member of the Service to carry on the member's work efficiently.*

(b) *The authority available to the Secretary of State under this section shall be available to the Director of the International Communication Agency and the Director of the United States International Development Cooperation Agency with respect to their respective agencies.*

SEC. 27. (a) *In order to expand employment opportunities for family members of United States Government personnel assigned abroad, the Secretary of State shall seek to conclude such bilateral and multilateral agreements as will facilitate the employment of such family members in foreign economies.*

(b) *Any member of a family of a member of the Foreign Service may accept gainful employment in a foreign country unless such employment—*

(1) *would violate any law of such country or of the United States; or*

(2) *could, as certified in writing by the United States chief of missions to such country, damage the interests of the United States.*

SEC. 28. *The Secretary of State may authorize the principal officer of a Foreign Service post to provide for the use of Government owned or leased vehicles located at that post for transportation of United States Government employees and their families when public transportation is unsafe or not available or when such use is advantageous to the Government.*

SEC. 29. *Whenever the Secretary of State determines that educational facilities are not available, or that existing educational facilities are inadequate, to meet the needs of children of United States citizens stationed outside the United States who are engaged in carrying out Government activities, the Secretary may, in such manner as he deems appropriate and under such regulations as he may prescribe, establish, operate, and maintain primary schools, and school dormitories and related educational facilities for primary and secondary schools, outside the United States, make grants of funds for such purposes, or otherwise provide for such educational facilities. The authorities of the Foreign Service Buildings Act, 1926, and of paragraphs (h) and (i) of section 3 of this Act, may be utilized by the Secretary in providing assistance for educational facilities. Such assistance may include hiring, transporting, and payment of teachers and other necessary personnel.*

SEC. 30. (a) *The remedy—*

(1) *against the United States provided by sections 1346 (b) and 2672 of title 28, United States Code, or*

(2) *through proceedings for compensation or other benefits from the United States as provided by any other law, where the availability of such benefits precludes a remedy under such sections,*

for damages for personal injury, including death, allegedly arising from malpractice or negligence of a physician, dentist, nurse, pharmacist, or paramedical (including medical and dental assistants and technicians, nursing assistants, and therapists) or other supporting personnel of the Department of State in furnishing medical care or related services, including the conducting of clinical studies or investigations, while in the exercise of his or her duties in or for the Department of State or any other Federal department, agency, or instrumentality shall be exclusive of any other civil action or proceeding by reason of the same subject matter against such physician, dentist, nurse, pharmacist, or paramedical or other supporting personnel (or his or her estate) whose act or omission gave rise to such claim.

(b) *The United States Government shall defend any civil action or proceeding brought in any court against any person referred to in subsection (a) of this section (or his or her estate) for any such damage or injury. Any such person against whom such civil action or proceeding is brought shall deliver, within such time after date of service or knowledge of service as may be determined by the Attorney General, all process served upon him or her or an attested true copy thereof to whomever was designated by the Secretary to receive such papers. Such person shall promptly furnish copies of the pleading and process therein to the United States attorney for the district embracing the place wherein the proceeding is brought, to the Attorney General, and to the Secretary.*

(c) *Upon a certification by the Attorney General that the defendant was acting within the scope of his or her employment in or for the Department of State or any other Federal department, agency, or instrumentality at the time of the incident out of which the suit arose, any such civil action or proceeding commenced in a State court shall be removed without bond at any time before trial by the Attorney General to the district court of the United States of the district and division embracing the place wherein it is pending and the proceeding deemed a tort action brought against the United States under the provisions of title 28, United States Code, and all references thereto. Should a United States district court determine on a hearing on a motion to remand held before a trial on the merits that the case so removed is one in which a remedy by suit within the meaning of subsection (a) of this section is not available against the United States, the case shall be remanded to the State court except that where such remedy is precluded because of the availability of a remedy through proceedings for compensation or other benefits from the United States as provided by any other law, the case shall be dismissed, but in that event, the running of any limitation of time for commencing, or filing an application or claim in, such proceedings for compensation or other benefits shall be deemed to have been suspended during the pendency of the civil action or proceeding under this section.*

(d) *The Attorney General may compromise or settle any claim asserted in such civil action or proceeding in the manner provided in*

section 2677 of title 28, the United States Code, and with the same effect.

(e) For purposes of this section, the provisions of section 2680(h) of title 28, United States Code, shall not apply to any tort enumerated therein arising out of negligence in the furnishing of medical care or related services, including the conducting of clinical studies or investigations.

(f) The Secretary may, to the extent he deems appropriate, hold harmless or provide liability insurance for any person to whom the immunity provisions of subsection (a) of this section apply, for damages for personal injury, including death, negligently caused by any such person while acting within the scope of his or her office or employment and as a result of the furnishing of medical care or related services, including the conducting of clinical studies or investigations, if such person is assigned to a foreign area or detailed for service with other than a Federal agency or institution, or if the circumstances are such as are likely to preclude the remedies of third persons against the United States provided by sections 1346(b) and 2672 of title 28, United States Code, for such damage or injury.

(g) For purposes of this section, any medical care or related service covered by this section and performed abroad by a covered person at the direction or with the approval of the United States chief of mission or other principal representative of the United States in the area shall be deemed to be within the scope of employment of the individual performing the service.

SEC. 31. (a) The Secretary of State may authorize and assist in the establishment, maintenance, and operation by civilian officers and employees of the Government of non-Government-operated services and facilities at posts abroad, including the furnishing of space, utilities, and properties owned or leased by the Government for use by its diplomatic, consular, and other missions and posts abroad. The provisions of the Foreign Service Buildings Act, 1926 (22 U.S.C. 292-300) and section 13 of this Act may be utilized by the Secretary in providing such assistance.

(b) The Secretary may establish and maintain emergency commissary or mess services in places abroad where, in the judgment of the Secretary, such services are necessary temporarily to insure the effective and efficient performance of official duties and responsibilities. Reimbursements incident to the maintenance and operation of commissary or mess service under this subsection shall be at not less than cost as determined by the Secretary and shall be used as working funds, except that an amount equal to the amount expended for such services shall be covered into the Treasury as miscellaneous receipts.

(c) Services and facilities established under this section shall be made available, insofar as practicable, to officers and employees of all agencies and their dependents who are stationed in the locality abroad. Such services and facilities shall not be established in localities where another agency operates similar services or facilities unless the Secretary determines that additional services or facilities are necessary. Other agencies shall to the extent practicable avoid duplicating the facilities and services provided or assisted by the Secretary under this section.

(d) *Charges at any post abroad for a service or facility provided, authorized or assisted under this section shall be at the same rate for all civilian personnel of the Government serviced thereby, and all charges for supplies furnished to such a service or facility abroad by any agency shall be at the same rate as that charged by the furnishing agency to its comparable civilian services and facilities.*

SEC. 32. The Secretary of State may pay, without regard to section 5702 of title 5, United States Code, subsistence expenses of (1) security officers of the Department of State who are on authorized protective missions, and (2) members of the Foreign Service and employees of the Department who are required to spend extraordinary amounts of time in travel status.

SEC. 33. This Act may be cited as the "State Department Basic Authorities Act of 1956".

PEACE CORPS ACT

TITLE I—THE PEACE CORPS

PEACE CORPS VOLUNTEERS

SEC. 5. (a) * * *

(f) (1) Any period of satisfactory service of a volunteer under this Act shall be credited in connection with subsequent employment in the same manner as a like period of civilian employment by the United States Government—

(A) for the purposes of [section 852(a)(1) of the Foreign Service Act of 1946, as amended (22 U.S.C. 1092(a)(1)),] *section 816(a) of the Foreign Service Act of 1980* and every other Act establishing a retirement system for civilian employees of any United States Government agency; and

(B) except as otherwise determined by the President, for the purposes of determining seniority, reduction in force, and layoff rights, leave entitlement; and other rights and privileges based upon length of service under the laws administered by the Civil Service Commission, the Foreign Service Act of [1946,] 1980, and every other Act establishing or governing terms and conditions of service of civilian employees of the United States Government: *Provided*, That service of a volunteer shall not be credited toward completion of any probationary or trial period or completion of any service requirement for career appointment.

(h) Volunteers shall be deemed employees of the United States Government for the purposes of the Federal Tort Claims Act and any other Federal tort liability statute, the Federal Voting Assistance Act of 1955 (5 U.S.C. 2171 et seq.), the Act of June 4, 1954, chapter 264, section 4 (5 U.S.C. 73b-75), the Act of December 23, 1944, chapter 716, section 1, as amended (31 U.S.C. 492a), section 5584

of title 5, United States Code (and readjustment allowances paid under this Act shall be considered as pay for purposes of such section), and section 1 of the Act of June 4, 1920 (41 Stat. 750), as amended (22 U.S.C. 214). The provisions of [section 1091 of the Foreign Service Act of 1946,] *section 30 of the State Department Basic Authorities Act of 1956*, relating to malpractice protection shall apply to volunteers, and the [Director of ACTION] *President* shall have the authority granted to the Secretary of State in subsection (f) of such section. For purposes of subsection (g) of such section, a Peace Corps representative shall be deemed to be a principal representative of the United States.

* * * * *

PEACE CORPS EMPLOYEES

SEC. 7. (a)(1) For the purpose of performing functions under this Act outside the United States, the President may employ or assign persons, or authorize the employment or assignment of officers or employees of agencies of the United States Government [, who shall receive compensation at any of the rates provided for persons appointed to the Foreign Service Reserve and Staff under the Foreign Service Act of 1946, as amended (22 U.S.C. 801 et seq.)] *which are not authorized to utilize the Foreign Service personnel system, who shall receive compensation at any of the rates established under section 402 or 403 of the Foreign Service Act of 1980, together with allowances and benefits thereunder; and persons so employed or assigned shall be entitled, except to the extent that the President may specify otherwise in cases in which the period of the employment or assignment exceeds thirty months, to the same benefits as are provided by section [528] 310 of that Act for persons appointed to the Foreign Service [Reserve, and the provisions of section 1005 of that Act shall apply in the case of such persons, except that policymaking officials shall not be subject to that part of section 1005 which prohibits political tests;]*.

[(2) The President may utilize such authority contained in the Foreign Service Act of 1946, as amended, relating to Foreign Service Reserve officers, Foreign Service staff officers and employees, alien clerks and employees, and other United States Government officers and employees apart from Foreign Service officers as he deems necessary to carry out functions under this Act; except that (A) no Foreign Service Reserve or staff appointment or assignment under this paragraph shall be for a period of more than five years unless the Director of the Peace Corps, under special circumstances personally approves an extension of not more than one year on an individual basis; and (B) no person whose Foreign Service Reserve or staff appointment or assignment under this paragraph has been terminated shall be reappointed or reassigned under this paragraph before the expiration of a period of time equal to his preceding tour of duty. Such provisions of that Act as the President deems appropriate shall apply to persons appointed or assigned under this paragraph, including in all cases, the provisions of section 528 of that Act: *Provided, however, That the President may by regulation make exceptions to the application of section 528 in cases in which the period of the appointment or*

assignment exceeds thirty months: *Provided further*, That Foreign Service Reserve officers appointed or assigned pursuant to this paragraph shall receive within-class salary increases in accordance with such regulations as the President may prescribe: *Provided further*, That under such regulations as the President may prescribe persons who are to perform duties of a more routine nature than are generally performed by Foreign Service staff officers and employees of class 10 may be appointed to an unenumerated class of Foreign Service staff officers and employees ranking below class 10 and be paid basic compensation at rates lower than those of class 10; and

(2) *In order to employ such individuals as may be necessary to perform duties that reasonably require availability for worldwide assignment, the President may utilize such authority contained in the Foreign Service Act of 1980 relating to members of the Foreign Service and other United States Government officers and employees as the President deems necessary to carry out functions under this Act, except that—*

(A) *no Foreign Service appointment or assignment under this paragraph shall be for a period of more than five years unless the Director of the Peace Corps, under special circumstances, personally approves an extension of not more than one year on an individual basis; and*

(B) *no individual whose Foreign Service appointment or assignment under this paragraph has been terminated shall be reappointed or reassigned under this paragraph before the expiration of a period of time equal to the preceding tour of duty of that individual.*

Such provisions of the Foreign Service Act of 1980 as the President deems appropriate shall apply to individuals appointed or assigned under this paragraph, including in all cases, the provisions of section 310 of that Act, except that (i) the President may by regulation make exceptions to the application of section 310 in cases in which the period of the appointment or assignment exceeds thirty months, (ii) members of the Foreign Service appointed or assigned pursuant to this paragraph shall receive within-class salary increases in accordance with such regulations as the President may prescribe.

* * * * *

(4) [Until such time as the Congress enacts Foreign Service personnel reform legislation which amends or otherwise supersedes this paragraph, a person who has received a Foreign Service Reserve or staff appointment or assignment under this subsection may, not later than three years after the effective date of this paragraph or] *An individual who has received an appointment or assignment in the Foreign Service under this subsection may, not later than September 30, 1982, or three years after separation from such appointment or assignment, whichever is later, be appointed to a position in any United States department, agency, or establishment—*

(A) *in the competitive service under title 5, United States Code, without competitive examination and in accordance with such regulations and conditions consistent with this subsection as may be prescribed by the Director of the Office of Personnel Management, or*

(B) in an established merit system in the excepted service, if such [person] *individual* (i) served satisfactorily under the authority of this subsection, as certified by the President, for not less than thirty-six months on a [substantially] continuous basis *without a break in service of more than three days*, and (ii) is qualified for the position in question.

[(b) The President is authorized to prescribe by regulation standards or other criteria for maintaining adequate performance levels for persons appointed or assigned for the purpose of performing functions under this Act outside the United States pursuant to subsection (a) (2) of this section and section 527(c) (2) of the Mutual Security Act of 1954, as amended, and may, notwithstanding any other law, separate persons who fail to meet such standards or other criteria, and also may grant such persons severance benefits of one month's salary for each year of service, but not to exceed one year's salary at the then current salary rate of such persons.]

* * * * *

EXPERTS AND CONSULTANTS

SEC. 13. (a) Experts and consultants or organizations thereof may, as authorized by Section 3109 of title 5, United States Code, be employed by the President for the performance of functions under this Act, and individuals so employed may be compensated at rates not in excess of the per diem equivalent of the highest rate payable under section 5332 of title 5, United States Code, and while away from their homes or regular places of business, they may be paid actual travel expenses and per diem in lieu of subsistence and other expense at the applicable rate prescribed in the Standardized Government Travel Regulations, as amended from time to time, while so employed: *Provided*, That contracts for such employment may be renewed annually.

(b) Service of an individual as a member of the Council authorized to be established by section 12 of this Act or as an expert or consultant under subsection (a) of this section shall not be considered as employment or holding of office or position bringing such individual within the provisions of sections 3323(b) and 8344 of title 5, United States Code, [section 872 of the Foreign Service Act of 1946, as amended] *section 824 of the Foreign Service Act of 1980*, or any other law limiting the reemployment of retired officers or employees or governing the simultaneous receipt of compensation and retired pay or annuities, subject to section 5532 of title 5, United States Code.

DETAIL OF PERSONNEL TO FOREIGN GOVERNMENTS AND INTERNATIONAL ORGANIZATIONS

SEC. 14. (a) In furtherance of the purposes of this Act, the head of any agency of the United States Government is authorized to detail, assign, or otherwise make available any officer or employee of his agency (1) to serve with, or as a member of, the international staff of any international organization, or (2) to any office or position to which no compensation is attached with any foreign government or agency thereof: *Provided*, That such acceptance of such office or position shall

in no case involve the taking of an oath of allegiance to another government.

(b) Any such officer or employee, while so detailed or assigned, shall be considered, for the purpose of preserving his allowances, privileges, rights, seniority, and other benefits as such, an officer or employee of the United States Government and of the agency of the United States Government from which detailed or assigned, and he shall continue to receive compensation, allowances, and benefits from funds authorized by this Act. He may also receive, under such regulations as the President may prescribe, representation allowances similar to those allowed under [section 901 of the Foreign Service Act of 1946 (22 U.S.C. 1131)] *section 905 of the Foreign Service Act of 1980*. The authorization of such allowances and other benefits, and the payment thereof out of any appropriations available therefor, shall be considered as meeting all of the requirements of section 5536 of title 5, United States Code.

* * * * *

UTILIZATION OF FUNDS

SEC. 15. (a) Funds made available for the purposes of this Act may be used for compensation, allowances and travel of employees, including *members of the Foreign Service* [personnel] whose services are utilized primarily for the purposes of this Act, for printing and binding without regard to the provisions of any other law, and for expenditures outside the United States for the procurement of supplies and services and for other administrative and operating purposes (other than compensation of employees) without regard to such laws and regulations governing the obligation and expenditure of Government funds as may be necessary to accomplish the purposes of this Act.

* * * * *

FOREIGN ASSISTANCE ACT OF 1961

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SEC. 625. EMPLOYMENT OF PERSONNEL.—(a) * * *

* * * * *

[(d) For the purposes of performing functions under this Act outside the United States the President may—

[(1) employ or assign persons, or authorize the employment or assignment of officers or employees by agencies of the United States Government, who shall receive compensation at any of the rates provided for the Foreign Service Reserve and Staff by the Foreign Service Act of 1946, as amended (22 U.S.C. 801 et seq.), together with allowances and benefits thereunder; and persons so employed or assigned shall be entitled, except to the extent that the President may specify otherwise in cases in which the period of employment or assignment exceeds thirty months, to the same benefits as are provided by section 528 of that Act for persons appointed to the Foreign Service Reserve, and the provisions of sec-

tion 1005 of that Act shall apply in the case of such persons, except that policy-making officials shall not be subject to that part of section 1005 of that Act which prohibits political tests; and

[(2) utilize such authority, including authority to appoint and assign personnel for the duration of operations under this Act, contained in the Foreign Service Act of 1946, as amended, as the President deems necessary to carry out functions under this Act; and such provisions of the Foreign Service Act of 1946, as amended, as the President deems appropriate shall apply to personnel appointed or assigned under this paragraph, including in all cases the provisions of section 528 of that Act: *Provided, however*, That the President may by regulation make exceptions to the application of section 528 in cases in which the period of the appointment or assignment exceeds thirty months: *Provided further*, That Foreign Service Reserve officers appointed or assigned pursuant to this paragraph shall receive within-class salary increases in accordance with such regulations as the President may prescribe: *Provided further*, That, whenever the President determines it to be important for the purposes of this Act, the President may initially assign personnel under this paragraph for duty within the United States for a period not to exceed two years for the purpose of preparation for assignment outside the United States.]

(d) *For the purpose of performing functions under this Act outside the United States, the President may employ or assign individuals, or may authorize the employment or assignment of officers or employees by agencies of the United States Government which are not authorized to utilize the Foreign Service personnel system, who shall receive compensation at any of the rates provided for under section 402 or section 403 of the Foreign Service Act of 1980, together with allowances and benefits under that Act. Individuals so employed or assigned shall be entitled, except to the extent that the President may specify otherwise in cases in which the period of employment or assignment exceeds thirty months, to the same benefits as are provided by section 310 of that Act for individuals appointed to the Foreign Service.*

[(e) The President is authorized to prescribe by regulation standards or other criteria for maintaining adequate performance levels for personnel appointed or assigned pursuant to paragraph (2) of subsection (d) of this section and section 527(c)(2) of the Mutual Security Act of 1954, as amended, and may, notwithstanding any other law, but subject to an appropriate administrative appeal, separate employees who fail to meet such standards or other criteria, and also may grant such personnel severance benefits of one month's salary for each year's service, but not to exceed one year's salary at the then current salary rate of such personnel.]

* * * * *

[(g) The principles regarding foreign language competence set forth in section 578 of the Foreign Service Act of 1946, as amended (22 U.S.C. 801), shall be applicable to personnel carrying out functions under this Act and the Secretary of State shall make appropriate designations and standards for such personnel.]

* * * * *

[(j) The President may appoint or assign a United States citizen to be representative of the United States to the Inter-American Committee on the Alliance for Progress and, in his discretion, may terminate such appointment or assignment, notwithstanding any other provision of law. Such person may be compensated at a rate not to exceed that authorized for a chief of mission, class 2, within the meaning of the Foreign Service Act of 1946, as amended.

[(k) (1) In accordance with such regulations as the President may prescribe, the following categories of personnel who serve in the agency primarily responsible for administering part I of this Act shall become participants in the Foreign Service Retirement and Disability System:

[(A) persons serving under unlimited appointments in employment subject to subsection (d) (2) of this section as Foreign Service Reserve officers and as Foreign Service staff officers and employees; and

[(B) a person serving in a position to which he was appointed by the President, whether with or without the advice and consent of the Senate, if (i) such person shall have served previously under an unlimited appointment pursuant to such subsection (d) (2) or a comparable provision of predecessor legislation to this Act, and (ii) following service specified in clause (i) of this subparagraph, such person shall have served continuously with such agency or its predecessor agencies only in positions established under the authority of sections 624(a) and 631(b) or comparable provisions of predecessor legislation to this Act.

[(2) Upon becoming a participant in the Foreign Service Retirement and Disability System any such officer or employee shall make a special contribution to the Foreign Service Retirement and Disability Fund in accordance with the provisions of section 852 of the Foreign Service Act of 1946, as amended. Thereafter, compulsory contributions will be made with respect to each such participating officer or employee in accordance with the provisions of section 811 of the Foreign Service Act of 1946, as amended.

[(3) The provisions of section 636 and title VIII of the Foreign Service Act of 1946, as amended, shall apply to participation in the Foreign Service Retirement and Disability System by any such officer or employee.

[(4) If an officer who becomes a participant in the Foreign Service Retirement and Disability System under paragraph (1) of this subsection is appointed by the President, by and with the advice and consent of the Senate, or by the President alone, to a position in any agency of the United States Government, any United States delegation or mission to any international organization, in any international commission, or in any international body, such officer shall not, by virtue of the acceptance of such an appointment, lose his status as a participant in the system.

[(5) Any such officer or employee who becomes a participant in the Foreign Service Retirement and Disability System under paragraph (1) of this subsection shall be mandatorily retired (A) at the end of the month in which he reaches age seventy, or (B) earlier if, during the third year after the effective date of this subsection, he attains age sixty-four or if he is over age sixty-four; during the fourth year

⁷ Subsection (k) repeal effective Jan. 1, 1982.

at age sixty-three; during the fifth year at age sixty-two; during the sixth year at age sixty-one; and thereafter at the end of the month in which he reaches age sixty. However, no participant shall be mandatorily retired under this paragraph while serving in a position to which appointed by the President, by and with the advice and consent of the Senate. Any participant who completes a period of authorized service after reaching the mandatory retirement age specified in this paragraph shall be retired at the end of the month in which such service is completed.

[(6) Whenever the President deems it to be in the public interest, he may extend any participant's service for a period not to exceed five years after the mandatory retirement date of such officer or employee.

[(7) This subsection shall become effective on the first day of the first month which begins more than one year after the date of its enactment, except that any officer or employee who, before such effective date, meets the requirements for participation in the Foreign Service Retirement and Disability System under paragraph (1) of this subsection may elect to become a participant before the effective date of this subsection. Such officer or employee shall become a participant on the first day of the second month following the date of his application for earlier participation. Any officer or employee who becomes a participant in the system under the provisions of paragraph (1) of this subsection, who is age fifty-seven or over on the effective date of this subsection, may retire voluntarily at any time before mandatory retirement under paragraph (5) of this subsection and receive retirement benefits under section 821 of the Foreign Service Act of 1946, as amended.

[(8) Any officer or employee who is separated for cause while a participant in the Foreign Service Retirement and Disability System pursuant to this subsection, shall be entitled to benefits in accordance with section 637 (b) and (d) of the Foreign Service Act of 1946, as amended. The provisions of subsection (e) of this section shall apply to participants in lieu of the provisions of sections 633 and 634 of the Foreign Service Act of 1946, as amended.]

* * * * *

SEC. 629. STATUS OF PERSONNEL DETAILED.—(a) Any officer or employee, while assigned or detailed under section 627 or 628 of this Act, shall be considered, for the purpose of preserving his allowances, privileges, rights, seniority, and other benefits as such, an officer or employee of the United States Government and of the agency of the United States Government from which detailed or assigned, and he shall continue to receive compensation, allowances, and benefits from funds appropriated to that agency or made available to that agency under this Act.

(b) Any officer or employee assigned, detailed, or appointed under section 627, 628, 631, or 624(d) of this Act is authorized to receive under such regulations as the President may prescribe, representation allowances similar to those allowed under [section 901 of the Foreign Service Act of 1946, as amended (22 U.S.C. 1131)] *section 905 of the Foreign Service Act of 1980*. The authorization of such allowances and other benefits and the payment thereof out of any appropriations

available therefor shall be considered as meeting all the requirements of section 5536 of title 5 of the United States Code.

* * * * *

SEC. 631. MISSIONS AND STAFFS ABROAD.—(a) The President may maintain special missions or staffs outside the United States in such countries and for such periods of time as may be necessary to carry out the purposes of this Act. Each such special mission or staff shall be under the direction of a chief.

(b) The chief and his deputy of each special mission or staff carrying out the purposes of part I shall be appointed by the President, and may, notwithstanding any other law, be removed by the President at his discretion. [Such chief shall be entitled to receive (1) in cases approved by the President, the same compensation and allowances as a chief of mission, class 3, or a chief of mission, class 4, within the meaning of the Foreign Service Act of 1946, as amended, or (2) compensation and allowances in accordance with section 625(d), as the President shall determine to be appropriate.] *Such chief shall be entitled to receive such compensation and allowances as are authorized by the Foreign Service Act of 1980, not to exceed those authorized for a chief of mission (as defined in section 102(a)(3) of that Act), as the President shall determine to be appropriate.*

(c) The President may appoint any United States citizen who is not an employee of the United States Government or may assign any United States citizen who is a United States Government employee to serve as Chairman of the Development Assistance Committee or any successor committee thereto of the Organization for Economic Cooperation and Development upon election thereto by members of said Committee, and, in his discretion, may terminate such appointment or assignment, notwithstanding any other provision of law. [Such person may receive such compensation and allowances as are authorized by the Foreign Service Act of 1946, as amended, not to exceed those authorized for a chief of mission, class 2, within the meaning of said Act, as the President may determine.] *Such person may receive such compensation and allowances as are authorized by the Foreign Service Act of 1980, not to exceed those authorized for a chief of mission (as defined in section 102(a)(3) of that Act), as the President shall determine to be appropriate.* Such person may also, in the President's discretion, receive any other benefits and perquisites available under this Act to chiefs of special missions or staffs outside the United States established under this section.

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ARMS CONTROL AND DISARMAMENT ACT

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[FOREIGN SERVICE RESERVE AND STAFF OFFICERS

[SEC. 42. The Secretary of State may authorize the Director to exercise, with respect to Foreign Service Reserve officers and Foreign Service Staff officers and employees appointed or employed for the

Agency, the following authority: (1) The authority available to the Secretary of State under the Foreign Service Act of 1946, as amended, (2) the authority available to the Secretary under any other provision of law pertaining specifically, or generally applicable, to such officers or employees, and (3) the authority of the Board of Foreign Service pursuant to the Foreign Service Act of 1946, as amended.】

FOREIGN SERVICE PERSONNEL

Sec. 42. (a) The Secretary of State may authorize the Director to exercise, with respect to members of the Foreign Service appointed or employed for the Agency—

(1) the authority available to the Secretary under the Foreign Service Act of 1980, and

(2) the authority available to the Secretary under any other provisions of law pertaining specifically or applicable generally to members of the Foreign Service.

(b) Limited appointments of members of the Foreign Service for the Agency may be extended or renewed, notwithstanding section 309 of the Foreign Service Act of 1980, so long as the service of the individual under such appointment does not exceed ten consecutive years without a break in service of at least one year.

* * * * *

USE OF FUNDS

SEC. 48. Appropriations made to the Director for the purposes of this Act, and transfers of funds to him by other Government agencies for such purposes, shall be available to him to exercise any authority granted him by this Act, including, without limitation, expenses of printing and binding without regard to the provisions of section 11 of the Act of March 1, 1919 (44 U.S.C. 111); purchase or hire of one passenger motor vehicle for the official use of the Director without regard to the limitations contained in section 78(c) of title 5 of the United States Code; entertainment and official courtesies to the extent authorized by appropriation; expenditures for training and study; expenditures in connection with participation in international conferences for the purposes of this Act; and expenses in connection with travel of personnel outside the United States, including transportation expenses of dependents, household goods, and personal effects, and expenses authorized by the Foreign Service Act of 【1946, as amended,】 1980 not otherwise provided for.

* * * * *

FOREIGN RELATIONS AUTHORIZATION ACT,
FISCAL YEAR 1979

* * * * *

TITLE IV—FOREIGN SERVICE AND
OTHER PERSONNEL

【EMPLOYMENT OF FAMILY MEMBERS OVERSEAS

【SEC. 401. (a) In order to expand employment opportunities for family members of the United States Government personnel assigned abroad, the President shall—

[(1) seek to conclude such bilateral and multilateral agreements as will facilitate the employment of such family members in foreign economies; and

[(2) direct that at any United States post abroad where a qualified family member is available to be hired, consideration shall be given, when continuity over a long term is not a significant consideration, to converting a vacant alien position to an American position for staffing by that family member.

[(b) (1) The section heading of section 444 of the Foreign Service Act of 1946 (22 U.S.C. 889) is amended to read as follows: "LOCAL COMPENSATION PLANS".

[(2) Subsection (a) (1) of such section is amended to read as follows:

[(a) (1) The Secretary shall, in accordance with such regulations as he may prescribe, establish compensation plans for alien employees of the Service and for United States citizens employed by the Department abroad who are family members of Government personnel serving in the same country. Such compensation plans shall be based upon prevailing wage rates and compensation practices for corresponding types of positions in the locality, to the extent consistent with the public interest. Compensation plans established pursuant to this section may include provision for leave of absence with pay for alien employees in accordance with prevailing law and employment practices in the locality of employment, without regard to section 6310 of title 5, United States Code."

[(3) Subsection (b) of such section is amended by striking out "alien employee programs" and inserting in lieu thereof "employment programs for aliens, and for family members of Government personnel serving abroad,".

[(4) Such section is further amended by adding at the end thereof the following new subsection:

[(d) The Secretary of State shall prescribe regulations authorizing the employment abroad, and providing for the compensation of family members of Government personnel."

[(c) Not later than January 20, 1979, the Secretary of State shall transmit to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate a report describing fully and completely the actions taken by the Department of State pursuant to this section and section 413 of the Foreign Relations Authorization Act, Fiscal Year 1978.]

* * * * *

[REVIEW OF FOREIGN SERVICE PERSONNEL REQUIREMENTS AND
COMPENSATION

[SEC. 413. (a) The Congress finds that—

[(1) since 1960, the United States has expanded its diplomatic representation abroad from approximately eighty countries to approximately one hundred and thirty countries;

[(2) despite such expanded responsibilities, and despite a significantly increased consular workload in all countries in which the United States is represented, the total number of personnel of the Department of State has remained approximately the same; and

[(3) although the responsibilities and necessary qualifications for individual Foreign Service positions continue to change, compensation for Foreign Service personnel continues to be linked to compensation for General Schedule employees at a level established years ago.

[(b) It is therefore the sense of the Congress that the Secretary of State should conduct a thorough review of the personnel needs of the Foreign Service and of the suitability of the current compensation system.

[(c) Not later than January 20, 1979, the Secretary of State shall transmit to the Speaker of the House of Representatives and to the chairman of the Committee on Foreign Relations of the Senate a report setting forth fully and completely—

[(1) the results of such review; and

[(2) such recommendations as the Secretary finds appropriate.]

* * * * *

SECTION 413 OF THE FOREIGN RELATIONS AUTHORIZATION ACT, FISCAL YEAR 1978

[EMPLOYMENT OF FOREIGN SERVICE SPOUSES

[Sec. 413. (a) The Secretary of State shall, when employing persons to fill jobs outside the United States to which career Foreign Service personnel are not customarily assigned, including temporary and local hire jobs, give equal consideration to employing qualified family members of United States Government employees (including family members of Foreign Service personnel) assigned to duties outside the United States. Such employment may not be used to avoid fulfilling the need for fulltime career positions.

[(b) To facilitate the employment by the Department of State, or by other employers, of the spouses of Foreign Service personnel, the Secretary may—

[(1) provide regular career counseling for such spouses;

[(2) maintain a centralized system for cataloging their skills and the various, governmental and nongovernmental, overseas employment opportunities available to such spouses; and

[(3) otherwise assist such spouses in obtaining overseas employment.

[(c) Any member of a family of Foreign Service personnel may accept gainful employment in a foreign country unless such employment—

[(1) would violate any law of such country or of the United States; or

[(2) Could, as certified in writing by the Chief of the United States Diplomatic Mission in such country, damage the interest of the United States.

[(d) Not later than January 1, 1978, the Secretary of State shall transmit to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate a report on actions the Department of State has taken to carry out the provisions of this section.]

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FOREIGN RELATIONS AUTHORIZATION ACT,
FISCAL YEAR 1977

* * * * *

TITLE I—STATE DEPARTMENT

* * * * *

【STATE DEPARTMENT/UNITED STATES INFORMATION AGENCY PERSONNEL
SYSTEM

【SEC. 117. It is the sense of Congress that the proliferation of personnel categories within the State Department and the United States Information Agency (the several categories being characterized by various standards for hiring, tenure, and pay) has resulted in a personnel system susceptible to inefficiency, inequity, and abuse. Therefore, within one hundred and eighty days of the enactment of this Act, the Secretary of State shall transmit to Congress a comprehensive plan for the improvement and simplification of this system, such plan to include a reduction in the number of personnel categories, and proposed legislation if necessary.】

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【APPOINTMENT OF AMBASSADORS

【SEC. 120. It is the sense of the Congress that a greater number of positions of ambassador should be occupied by career personnel in the Foreign Service.】

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TITLE V—FOREIGN SERVICE RETIREMENT

* * * * *

【CONVERSION TO FOREIGN SERVICE RETIREMENT SYSTEM

【SEC. 522. (a) In accordance with such regulations as the President may prescribe, all Foreign Service staff officers and employees with unlimited appointments who (1) have been appointed by the Secretary of State or the Director, United States Information Agency, and (2) are participants in the Civil Service Retirement and Disability System on the effective date of this section, shall be transferred to the Foreign Service Retirement and Disability System effective on such date. Their retirement contributions shall be transferred in accordance with section 811 of the Foreign Service Act of 1946, as amended by this title.

【(b) Mandatory retirement at age sixty as prescribed in section 632 of the Foreign Service Act of 1946, as amended by this title, shall not apply to any Foreign Service staff officer or employee who becomes a participant in the Foreign Service Retirement and Disability System pursuant to subsection (a) of this section until such officer or employee completes ten years of continuous service in the Foreign Service exclusive of military service, in the Department of State or ten years of such continuous service in the United States Information Agency.

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[(c) Any Foreign Service staff officer or employee who becomes a participant in the Foreign Service Retirement and Disability System pursuant to subsection (a) of this section who is age fifty-seven or over on the effective date of this section may retire voluntarily at any time prior to mandatory retirement and receive retirement benefits under section 821 of the Foreign Service Act of 1946, as amended by this title.

[(d) Section 9(b) of the Act of August 20, 1968 (82 Stat. 812), is repealed on the effective date of this section.]

* * * * *

SECTION 6 OF THE DEPARTMENT OF STATE APPROPRIATIONS AUTHORIZATION ACT OF 1973

[AMBASSADORS AND MINISTERS

[SEC. 6. From and after the date of enactment of this Act, each person appointed by the President as ambassador or minister shall, at the time of his nomination, file with the Committee on Foreign Relations of the Senate and the Speaker of the House of Representatives a report of contributions made by such person and by members of his immediate family during the period beginning on the first day of the fourth calendar year preceding the calendar year of his nomination and ending on the date of his nomination, which report shall be verified by the oath or affirmation of such person, taken before any officer authorized to administer oaths. The Chairman of the Committee on Foreign Relations of the Senate shall have printed in the Congressional Record each such report. As used in this section, the term "contribution" has the same meaning given such term by section 301(e) of the Federal Election Campaign Act of 1971, and the term "immediate family" means a person's spouse, and any child, parent, grandparent, brother, or sister of such person and the spouses of any of them.]

* * * * *

THE ACT OF AUGUST 20, 1968

[AN ACT To promote the foreign policy of the United States by strengthening and improving the Foreign Service personnel system of the International Communication Agency through establishment of a Foreign Service Information Officer Corps.

[Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there is hereby established a category of officers of the International Communication Agency (hereinafter referred to as "the Agency") to be known as Foreign Service information officers.

[STATEMENT OF POLICY

[SEC. 2. It is the sense of the Congress that the establishment of a permanent career service for officers of the Agency who serve our country throughout the world in a vital function of the foreign rela-

tions of the United States is essential to enable the Director of the International Communication Agency (hereinafter referred to as "the Director") to carry out effectively such functions and responsibilities assigned to the Agency.

[STATEMENT OF PURPOSES]

[SEC. 3. The Congress of the United States hereby declares that the purposes of this Act are—

[(a) to provide a statutory basis necessary for a worldwide career officer personnel system designed to meet the continuing needs of both the Agency and those qualified citizens who shall serve as Foreign Service information officers in this vital activity;

[(b) to give the Director the full range of personnel authority necessary to establish and administer the Foreign Service Information Officer Corps;

[(c) to regularize the personnel system of the Agency by establishing a career service in which qualified Foreign Service information officers may be recruited, trained, and serve;

[(d) to assure maximum efficiency and flexibility in the utilization of the talents of Foreign Service information officers; and

[(e) to accord Foreign Service information officers the same rights and perquisites and to subject them to the same stringent judgment of performance as Foreign Service officers employed under the provisions of the Foreign Service Act of 1946, as amended.

[AUTHORITY OF THE DIRECTOR]

[SEC. 4. Foreign Service information officers, Foreign Service Reserve officers, Foreign Service staff officers and employees, and alien clerks and employees of the Agency shall be under the direction and authority of the Director. Authority available to the Secretary of State with respect to Foreign Service officers, Foreign Service Reserve officers, Foreign Service staff officers and employees, or alien clerks and employees of the Department of State shall be available on the same basis to the Director with respect to Foreign Service information officers, Foreign Service Reserve officers, Foreign Service staff officers and employees, and alien clerks and employees of the Agency, except as provided in section 11 of this Act.

[POLICIES AND REGULATIONS]

[SEC. 5. The Foreign Service information officer personnel system shall be compatible with the Foreign Service officer personnel system. Toward this end, the Director with respect to the Foreign Service information officer personnel system and the Secretary of State with respect to the Foreign Service officer personnel system, after consultation with such officials as the President may determine, shall promulgate policies and regulations governing such systems. Both systems shall be administered, to the extent practicable, in conformity with general policies and regulations of the Federal Government issued in accordance with law.

[APPOINTMENT AND ASSIGNMENT

[SEC. 6. (a) Subject to section 4, Foreign Service information officers shall be appointed and assigned at classes and salaries, and in accordance with requirements and procedures, which correspond to those classes, salaries, requirements, and procedures, except with regard to career ambassadors, prescribed by sections 412, 413, 421, 422, 431 (c), 432, 441, 500, 501 (b), 502 (b), 511, 514 through 520, 571 through 575, and 578 of the Foreign Service Act of 1946, as amended.

[(b) The President shall, by and with the advice and consent of the Senate, appoint Career Ministers for Information.

[(c) The Secretary of State may, upon request of the Director, furnish the President with the names of Foreign Service information officers qualified for appointment to the class of Career Minister for Information, together with pertinent information about such officers, but no person shall be appointed into the class of Career Minister for Information who has not been appointed to serve in an Embassy as a Minister for Public Affairs or appointed or assigned to serve in a position which, in the opinion of the Director, is of comparable importance. A list of such positions shall from time to time be published by the Director.

[(d) The per annum salary of a Career Minister for Information shall be the same as that provided by section 412 of the Foreign Service Act of 1946, as amended, for the class of Career Minister.

[PROMOTION

[SEC. 7. Foreign Service information officers shall be promoted in accordance with the provisions of sections 621 through 623, and 626 of the Foreign Service Act of 1946, as amended, and shall receive within-class salary increases in accordance with section 625 of such Act.

[SEPARATION AND RETIREMENT

[SEC. 8. Foreign Service information officers shall be separated and retired in accordance with sections 631 through 637 of the Foreign Service Act of 1946, as amended.

[PARTICIPATION IN THE FOREIGN SERVICE RETIREMENT AND DISABILITY SYSTEM

[SEC. 9. (a) Foreign Service information officers shall be participants in and entitled to the benefits of the Foreign Service retirement and disability system under title VIII of the Foreign Service Act of 1946, as amended, on the same basis as Foreign Service officers. Any such Foreign Service information officer who becomes a participant in such system shall make contributions to the Foreign Service retirement and disability fund on the same basis as Foreign Service officers.

[(c) Any such officer or employees who, under the provisions of paragraph (b) of this section, becomes a participant in the Foreign Service retirement and disability system, shall be mandatorily retired for age during the third year after the effective date of that

paragraph if he attains age sixty-four or if he is over age sixty-four; during the fourth year at age sixty-three; during the fifth year at age sixty-two; during the sixth year at age sixty-one, and thereafter at age sixty.

[(d) Any officer or employee who becomes a participant in the Foreign Service retirement and disability system under the provisions of paragraph (b) of this section who is age fifty-seven or over on the effective date of that paragraph, may retire voluntarily at any time before mandatory retirement under paragraph (c) of this section and receive retirement benefits under section 821 of the Foreign Service Act of 1946, as amended.

[(e) The provisions of paragraph (b) of this section becomes effective on the first day of the first month which begins more than one year after the date of enactment of this Act, except that any Foreign Service Staff officer or employee, who at the time this Act becomes effective meets the requirements for participation in the Foreign Service retirement and disability system, may elect to become a participant in the system before the mandatory provisions become effective. Some Foreign Service Staff officers and employees shall become participants effective on the first day of the second month following the date of their application for earlier participation.

[OTHER APPLICABLE PROVISIONS OF LAW

[SEC. 10. All provisions of the Foreign Service Act of 1946 or of any other law, which apply to Foreign Service officers, Foreign Service Reserve officers, Foreign Service staff officers and employees, or alien clerks and employees of the Department of State and which are not referred to in sections 6 through 9 of this Act, shall be applicable to Foreign Service information officers, Foreign Service Reserve officers, Foreign Service staff officers and employees, or alien clerks and employees, as the case may be, of the Agency.

[COMMISSIONING AND ASSIGNMENT AS DIPLOMATIC AND CONSULAR OFFICERS

[SEC. 11. (a) The Secretary of State may, upon request of the Director, recommend to the President that Foreign Service information officers or Foreign Service Reserve officers of the Agency be commissioned as diplomatic or consular officers, or both, in accordance with section 512 or 524 of the Foreign Service Act of 1946.

[(b) The Secretary of State may, upon request of the Director, assign Foreign Service information officers or Foreign Service Reserve officers of the Agency, commissioned as diplomatic or consular officers, to serve under such commissions in accordance with sections 512 and 514 or section 524 of the Foreign Service Act of 1946.

[INTERPRETATION AND CONSTRUCTION

[SEC. 12. For the purposes of this Act the term "Foreign Service officer" when used in the Foreign Service Act of 1946, as amended, or in any other provision of law shall be construed to mean "Foreign Service information officer" and the term "Secretary of State" when

used with respect to authorities applicable to Foreign Service officers shall be construed to mean the Director of the Internal Communication Agency with respect to Foreign Service information officers.

[TRANSFER OF AGENCY FOREIGN SERVICE OFFICERS TO FOREIGN SERVICE INFORMATION OFFICER STATUS]

[SEC. 13. Agency Foreign Service officers on active service on the effective date of this Act shall, by virtue of this Act, be transferred from the classes in which they are serving on such date to the comparable salaries and classes of Foreign Service information officers established by this Act. Service in the former class shall be considered as constituting service in the new class for the purposes of determining (1) eligibility for promotion, in accordance with the provisions of section 622, (2) liability for separation, in accordance with the provisions of section 633, (3) continuation of probationary status pursuant to section 635, and (4) credit for time served toward in-class promotion in accordance with section 625.

[VETERANS' PREFERENCE]

[SEC. 14. Notwithstanding the provisions of section 3320 of title 5 of the United States Code, the fact that any applicant is a veteran or disabled veteran, as defined in section 2108 (1) or (2) of such title, shall be taken into consideration as an affirmative factor in the selection of applicants for initial appointment as Foreign Service officers or Foreign Service information officers.

[TENURE OF FOREIGN SERVICE RESERVE OFFICERS]

[SEC. 15. (a) Any officer appointed as a Foreign Service Reserve officer after the date of enactment of this Act may serve as such for not more than five years. During such period (no sooner than the expiration of the third year but no later than the expiration of the fifth year) such Foreign Service Reserve officer shall be appointed as a Foreign Service officer, Foreign Service Information officer, Foreign Service Reserve officer with unlimited tenure, Foreign Service Staff officer, or shall be terminated as a Foreign Service Reserve officer.

[(b) Notwithstanding the provisions of sections 522 and 527 of the Foreign Service Act of 1946, as amended, an appointment of any Foreign Service Reserve officer existing on the date of enactment of this Act, may be extended, but not beyond the expiration of the five-year period beginning on such date of enactment.

[RETIREMENT AND SEPARATION OF FOREIGN SERVICE RESERVE OFFICERS]

[SEC. 16. (a) In accordance with such regulations as the President may prescribe, any Foreign Service Reserve officer with unlimited tenure shall become a participant in the Foreign Service retirement and disability system and shall make a special contribution to the Foreign Service Retirement and Disability Fund in accordance with the provisions of section 852 of the Foreign Service Act of 1946, as amended.

Beginning on the date of enactment of this Act, any Reserve officer referred to in the preceding sentence shall be mandatorily retired for age in accordance with the provisions of subsections (c) and (d) of section 9 of this Act.

[(b) The provisions of sections 633 and 634 of the Foreign Service Act of 1946, as amended, shall apply to Foreign Service Reserve officers with unlimited tenure.

[PRESENT FOREIGN SERVICE RESERVE OFFICERS

[SEC. 17. Any Foreign Service Reserve officer appointed before the date of enactment of this Act who has completed at least three years of continuous and satisfactory service as such on such date of enactment, or who will have completed at least three years of such service before the expiration of the three-year period beginning on such date of enactment, may be appointed as a Foreign Service Reserve officer with unlimited tenure.

[LIMITATION ON EXTENSION OF FOREIGN SERVICE RESERVE OFFICER APPOINTMENTS

[SEC. 18. Paragraph (3) of section 522 of the Foreign Service Act of 1946, as amended, is amended by inserting immediately before the period at the end thereof the following: "; except that the authority contained in this paragraph relating to extending the appointment of any Reserve officer, and to continuing the services of any such Reserve officer by reappointment, shall not be applicable to the Department of State and the United States Information Agency".

[EXCLUSION OF CERTAIN AGENCIES

[SEC. 19. The provisions of sections 15, 16, and 17 of this Act shall not apply to officers and employees of the Agency for International Development, the Peace Corps, and the Arms Control and Disarmament Agency.]

SECTION 124 OF THE INTERNATIONAL DEVELOPMENT AND FOOD ASSISTANCE ACT OF 1977

INSPECTOR GENERAL, FOREIGN ASSISTANCE

SEC. 124. (a) (1) * * *

[(2) The President (A) may assign to the Inspector General, Foreign Service, any of the duties and responsibilities vested by such section 624(d) in the Inspector General, Foreign Assistance, and (B) may authorize the Inspector General, Foreign Service, to exercise such of the authorities granted by such section 624(d) to the Inspector General, Foreign Assistance, as the President determines are necessary to carry out any duties or responsibilities so assigned.]

(b) Section 5315 of title 5, United States Code, is amended by repealing paragraphs (52) and (53).

(c) The amendments made by this section shall take effect on July 1, 1978.

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THE ACT OF MAY 21, 1952

[AN ACT To make certain increases in the annuities of annuitants under the Foreign Service retirement and disability system.]

[Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any Foreign Service officer who has retired before November 13, 1950, on annuity under the provisions of the Act of May 24, 1924 (43 Stat. 140), as amended, or under the provisions of the Foreign Service Act of 1946 (60 Stat. 999), and who does not come within the purview of section 2 of this Act shall have his annuity increased on the first day of the second month following the month in which this Act is enacted or on the date such annuity commences, whichever is later, in accordance with the following scale:

[(a) By 25 per centum or \$300, whichever is the lesser, if retirement took place before November 13, 1946;

[(b) By 20 per centum or \$240, whichever is the lesser, if retirement took place on or after November 13, 1946, and before November 13, 1947;

[(c) By 15 per centum or \$180, whichever is the lesser, if retirement took place on or after November 13, 1947, and before November 13, 1948;

[(d) By 10 per centum or \$120, whichever is the lesser, if retirement took place on or after November 13, 1948, and before November 13, 1949; and

[(e) By 5 per centum or \$60, whichever is the lesser, if retirement took place on or after November 13, 1949, and before November 13, 1950: *Provided*, That in no case shall an annuity increased under this Act exceed the largest annuity payable under section 821(a) of the Foreign Service Act of 1946.

[SEC. 2. Any Foreign Service officer who has retired before November 13, 1950, and who has elected or may elect to receive a reduced annuity under the provisions of section 18 of the Act of May 24, 1924 (43 Stat. 144), as amended, or the provisions of sections 821 and 1112 of the Foreign Service Act of 1946 (60 Stat. 1020, 1035), and any widow or other beneficiary of such officer who is receiving or who shall receive a survivorship annuity, shall have the amount of such annuity increased in an amount equal to the percentage differential between the full annuity which the officer would have received prior to the passage of this Act if he had elected to take a full annuity and the amount of the increased full annuity provided for in the first section of this Act. The increase in annuities provided for in this section shall be effective on the first day of the second month following the month in which this Act is enacted or on the effective date such annuities commence, whichever date is later.]

THE ACT OF SEPTEMBER 2, 1958

[AN ACT To provide for adjustments in the annuities under the Foreign Service retirement and disability system.]

[Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the an-

nuity of each retired officer who, on August 1, 1958, is receiving or entitled to receive an annuity from the Foreign Service Retirement and Disability Fund, based on service which terminated on or before January 31, 1958, shall be increased by 10 per centum.

[(b) The annuity otherwise payable from the Foreign Service Retirement and Disability Fund to—

[(1) each survivor annuitant who, on August 1, 1958, is receiving or entitled to receive an annuity based on service which terminated on or before January 31, 1958, and

[(2) each person granted an annuity in accordance with section 5 of the Act of May 1, 1956 (70 Stat. 125), shall be increased by 10 per centum.

[(c) The increases provided by subsections (a) and (b) of this section shall become effective on the first day of the second calendar month following the enactment of this Act.

[SEC. 2. The annuity of each retired officer who, on or after August 1, 1958, is receiving or entitled to receive an annuity from the Foreign Service Retirement and Disability Fund, based on service which terminated on or after February 1, 1958, shall be increased effective on the first day of the second calendar month following enactment of this Act or on the commencing date of annuity, whichever is later, in accordance with the following schedule:

If annuity between—	Annuity shall be increased by—
[February 1, 1958 and June 30, 1959-----	8 per centum
[July 1, 1959 and June 30, 1960-----	6 per centum
[July 1, 1960 and June 30, 1961-----	4 per centum
[July 1, 1961 and June 30, 1962-----	2 per centum

[SEC. 3. The annuity of any survivor annuitant who, on or after August 1, 1958, is receiving or entitled to receive an annuity from the Foreign Service Retirement and Disability Fund, based on service which terminated on or after February 1, 1958, shall be increased effective on the first day of the second calendar month following enactment of this Act or on the commencing date of annuity, whichever is later, in accordance with the following schedule:

If annuity between—	Annuity shall be increased by—
[February 1, 1958 and June 30, 1959-----	8 per centum
[July 1, 1959 and June 30, 1960-----	6 per centum
[July 1, 1960 and June 30, 1961-----	4 per centum
[July 1, 1961 and June 30, 1962-----	2 per centum

[SEC. 4. No increase provided by this Act shall be computed on any additional annuity purchased with voluntary contributions pursuant to the provisions of section 881 of the Foreign Service Act of 1946, as amended.

[SEC. 5. No annuity of a retired officer shall be increased under any section of this Act in an amount in excess of \$500 per annum. No annuity of a survivor annuitant shall be increased under any section of this Act in an amount in excess of \$250 per annum.]

THE ACT OF JULY 12, 1960

[AN ACT To provide for adjustments in the annuities under the Foreign Service retirement and disability system.

[Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the an-

nuity of each person heretofore or hereafter retired who, on or before June 30, 1962, is receiving or entitled to receive an annuity from the Foreign Service Retirement and Disability Fund shall be increased by 10 per centum.

[(b) The annuity of each widow survivor annuitant who, on or before June 30, 1962, is receiving a survivor annuity from the Foreign Service Retirement and Disability Fund is hereby increased by 10 per centum, or so much in excess thereof as will enable any such widow to receive a minimum annuity of \$2,400 per annum.

[(c) No increase provided by this section shall be computed on any additional annuity purchased with voluntary contributions pursuant to the provisions of section 881 of the Foreign Service Act of 1946, as amended.

[(d) The increases provided by this section shall take effect on the first day of the first month which begins more than thirty days after the date of enactment of this Act, or on the commencing date of the annuity, whichever is later.

[SEC. 2. (a) Section 5 of Public Law 503, Eighty-fourth Congress, is amended to read as follows:

["SEC. 5. In any case where a participant under the Foreign Service Retirement and Disability System died before August 29, 1954, leaving a widow who is not entitled to receive an annuity under the System and who is not receiving benefits as a widow under the Federal Employees' Compensation Act, the Secretary of State is authorized and directed to grant such widow an annuity of \$2,400 per annum."

[(b) The amendment made by this section shall take effect on the first day of the first month which begins more than thirty days after the date of enactment of this Act.]

FOREIGN SERVICE ANNUITY ADJUSTMENT ACT OF 1965

[AN ACT To provide for adjustments in annuities under the Foreign Service retirement and disability system.

[Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Foreign Service Annuity Adjustment Act of 1965".

[SEC. 2. (a) Annuities paid from the Foreign Service retirement and disability fund on the date of enactment of this Act, based on service performed by annuitants which terminated prior to October 16, 1960, shall be adjusted under the provisions of section 821(b) of the Foreign Service Act of 1946, as in effect on October 16, 1960, relating to the formula for reduction in annuity to provide for a surviving widow, as though such provisions had been in effect on the date of the annuitant's separation from the Service, or, in the case of any annuitant who makes an election under paragraph (1) or (2) of this subsection, in accordance with the following:

[(1) An annuitant who at time of retirement was married to a wife who is still living (and to whom he is married on the date of enactment of this Act), and for whom he has not elected a widow survivor benefit before such date of enactment, may, within one hundred and twenty days after such date of enactment, elect

to provide a widow survivor benefit of \$2,400 per annum. The annuity of an annuitant who makes an election under this paragraph shall be reduced by \$300 per annum.

[(2) An annuitant who at time of retirement was married to a wife who is still living (and to whom he is married on the date of enactment of this Act) and for whom he has elected, before such date of enactment, a widow survivor benefit of less than \$2,400 per annum, may, within one hundred and twenty days after such date of enactment, elect to provide a widow survivor benefit of \$2,400 per annum. The annuity of an annuitant who makes an election under this paragraph shall be reduced by \$300 per annum in lieu of any reductions of his annuity in effect on the date of enactment of this Act because of elections made by him before such date of enactment in connection with the provision of a widow survivor annuity.

[(b) If an annuitant referred to in paragraph (a) (1) or (a) (2) of this section dies within one hundred and twenty days after the date of enactment of this Act, without having made an election under such paragraph (a) (1) or (a) (2), his surviving widow shall be paid the greater of—

[(1) \$2,400; or

[(2) the annuity to which she may be entitled from the Foreign Service retirement and disability fund as his widow under any provision of law in effect on the date of the death of the annuitant.

[(c) Notwithstanding the foregoing provisions of this section, each annuitant, who makes an election under paragraph (1) of subsection (a) shall pay into the Foreign Service retirement and disability fund an amount equal to the amount by which (A) the total annuity received by the annuitant prior to the effective date of any adjustment in his annuity pursuant to such election exceeds (B) the total annuity which he would have received prior to such date had he elected a survivor annuity of \$2,400 per annum at the time of such retirement. The Secretary of State may permit the payment required by this subsection to be made in installments of not less than \$25 per month.

[SEC. 3. If a former participant whose service as a class 4 Foreign Service officer was terminated prior to October 16, 1960, and who elected a deferred annuity, dies before becoming eligible to receive an annuity, the benefit of the surviving widow, if she was eligible under the terms of the law in effect upon his separation from the Service, shall not be less than \$2,400 per annum.

[SEC. 4. In any case in which an annuitant who retired prior to October 16, 1960, dies before the date of enactment of this Act, leaving a widow to whom he was married at time of retirement who is not entitled to receive an annuity under the Foreign Service retirement and disability system, and who is not receiving benefits as a widow under the Federal Employees' Compensation Act, the Secretary of State shall grant such widow, whether remarried or not, an annuity of \$2,400 per annum.

[SEC. 5. The annuity of each widow survivor annuitant who, on the date of enactment of this Act, is receiving a survivor annuity from the Foreign Service retirement and disability fund of less than \$2,400 per annum is hereby increased to \$2,400 per annum.

【SEC. 6. The annuity benefits elected or provided with respect to any widow under section 2, 3, 4, or 5 of this Act shall be in lieu of any annuity benefits to which such widow otherwise would be entitled as the widow of the Foreign Service officer with respect to whom such annuity benefits are so elected or provided.

【SEC. 7. Any increase, adjustment, or grant of an annuity under section 2, 4, or 5 of this Act shall commence on the first day of the month following the expiration of the one-hundred-and-twenty-day period beginning on the date of enactment of this Act, and the monthly rate payable shall be fixed at the nearest dollar.

【SEC. 8. Annuity benefits provided by this Act shall be paid from the Foreign Service retirement and disability fund; except that, no part of such fund shall be applied toward the payment of any benefits under section 2, 4, or 5 of this Act until an appropriation is made to such fund in an amount which the Secretary of the Treasury estimates to be necessary to prevent an increase in the unfunded liability to such fund for the first fiscal year during which such benefits are payable.

【SEC. 9. Title VIII of the Foreign Service Act of 1946, as amended, is amended as follows:

【(1) Section 821(b) of such Act (22 U.S.C. 1076(b)) is amended to read as follows:

【“(b) (1) At the time of retirement, any married female participant may elect to receive a reduced annuity and to provide for an annuity payable to her husband, commencing on the date following such participant's death and terminating upon the death of such surviving husband. The annuity payable to the surviving husband after such participant's death shall be 50 per centum of the amount of the participant's annuity computed as prescribed in paragraph (a) of this section, up to the full amount of such annuity specified by her as the base for the survivor benefits. The annuity of the participant making such election shall be reduced by 2½ per centum of any amount up to \$2,400 she specifies as the base for the survivor benefit plus 10 per centum of any amount over \$2,400 so specified.

【“(2) At the time of retirement, the annuity of each married male participant computed as prescribed in paragraph (a) of this section shall be reduced by \$300 to provide for his surviving wife a minimum annuity of \$2,400, except that, if his annuity is more than \$4,800, he may elect up to 50 per centum of such annuity for his surviving wife, and if such election is made, his annuity shall be further reduced by 10 per centum of the difference between \$4,800 and the base he specifies for the survivor benefit.”

【(2) The first sentence of section 832(b) of such Act (22 U.S.C. 1082(b)) is amended by inserting immediately before the period at the end thereof the following: “; except that the annuity of any widow shall not be less than \$2,400”.

【(3) At the end of title VIII of such Act add the following:

【“PART J—COST-OF-LIVING ADJUSTMENTS OF ANNUITIES

【“SEC. 882. (a) On the basis of determination made by the Civil Service Commission pursuant to section 18 of the Civil Service Retirement

ment Act, as amended, pertaining to per centum change in the price index, the following adjustments shall be made:

["(1) Effective April 1, 1966, if the change in the price index from 1962 to 1965 shall have equaled a rise of at least 3 per centum, each annuity payable from the fund which has a commencing date earlier than January 2, 1965, shall be increased by the per centum rise in the price index adjusted to the nearest one-tenth of 1 per centum.

["(2) Effective April 1 of any year other than 1966 after the price index change shall have equaled a rise of at least 3 per centum, each annuity payable from the fund which has a commencing date earlier than January 2 of the preceding year shall be increased by the per centum rise in the price index adjusted to the nearest one-tenth of 1 per centum.

["(b) Eligibility for an annuity increase under this section shall be governed by the commencing date of each annuity payable from the fund as of the effective date of an increase, except as follows:

["(1) Effective from the date of the first increase under this section, an annuity payable from the fund to an annuitant's survivor (other than a child entitled under section 821(c)), which annuity commenced the day after the annuitant's death, shall be increased as provided in subsection (a) (1) or (a) (2) if the commencing date of annuity to the annuitant was earlier than January 2 of the year preceding the first increase.

["(2) Effective from its commencing date, an annuity payable from the fund to an annuitant's survivor (other than a child entitled under section 821(c)), which annuity commences the day after the annuitant's death and after the effective date of the first increase under this section, shall be increased by the total per centum increase the annuitant was receiving under this section at death.

["(3) For purposes of computing an annuity which commences after the effective date of the first increase under this section to a child under section 821(c), the items \$600, \$720, \$1,800, and \$2,160 appearing in section 821(c) shall be increased by the total per centum increase allowed and in force under this section and, in case of a deceased annuitant, the items 40 per centum and 50 per centum appearing in section 821(c) shall be increased by the total per centum increase allowed and in force under this section to the annuitant at death. Effective from the date of the first increase under this section, the provisions of this paragraph shall apply as if such first increase were in effect with respect to computation of a child's annuity under section 821(c) which commenced between January 2 of the year preceding the first increase and the effective date of the first increase.

["(c) No increase in annuity provided by this section shall be computed on any additional annuity purchased at retirement by voluntary contributions.

["(d) No increase in annuity provided by this section shall apply to amounts paid under authority of section 5 of Public Law 84-503, as amended, section 4 of the Foreign Service Annuity Adjustment Act of 1965, or any other law authorizing annuity grants to widows.

["(e) The monthly installment of annuity after adjustment under this section shall be fixed at the nearest dollar."]

THE ACT OF MAY 1, 1956

[AN ACT To make certain increases in the annuities of annuitants under the Foreign Service retirement and disability system.]

[Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the annuity of an annuitant under the Foreign Service retirement and disability system pursuant to the Act of May 24, 1924 (43 Stat. 140), as amended, or the Foreign Service Act of 1946 (60 Stat. 999), as amended, shall be increased the first day of the second month following enactment of this Act in accordance with the following rules:

[If the annuitant was formerly a participant in the system, the annuity to which he is entitled shall be increased \$324, provided he retired before July 1, 1949.

[SEC. 2. In the case of an officer who retired before July 1, 1949, and elected a reduced annuity at time of retirement, and who availed himself of the restoration clause in section 821(b) of the Foreign Service Act of 1946, as amended, such officer shall be entitled to receive the increase provided by the first section of this Act.

[SEC. 3. If the annuitant is receiving an annuity on the effective date of this Act as the survivor of a former participant in the system who retired before July 1, 1949, the annuity shall be increased in the amount of \$324 or in such larger amount as may be necessary to make the total annuity equal to \$1,200; except that in no event shall such annuity be increased by any amount in excess of \$324 if such increase would result in a total annuity greater than the annuity which such survivor would have been entitled to receive (as determined by the Secretary of State, taking into consideration any generally applicable pay increases but not any in-class increases or possible additional years of service) immediately prior to the effective date of this Act if such former participant had retired on November 13, 1950 (the date specified in Public Law 348, Eighty-second Congress).

[SEC. 4. If the wife of a Foreign Service officer who retired prior to July 1, 1949, becomes an annuitant subsequent to the effective date of this Act, as a result of the election made by the officer at time of retirement, such widow's annuity shall be increased in the amount of \$324.

[SEC. 5. In any case where a participant under the Foreign Service Retirement and Disability System died before August 29, 1954, leaving a widow who is not entitled to receive an annuity under the System and who is not receiving benefits as a widow under the Federal Employees' Compensation Act, the Secretary of State is authorized and directed to grant such widow an annuity of \$2,400 per annum.

[SEC. 6. In no case shall an annuity increased under this Act exceed the maximum annuity payable under section 821 (a) or (b) of the Foreign Service Act of 1946, as amended.

[SEC. 7. No annuity currently payable to any annuitant under the Foreign Service retirement and disability system shall be reduced as a result of the provisions of this Act.]

SECTION 3 OF THE ASIAN DEVELOPMENT BANK ACT

SEC. 3. (a) The President, by and with the advice and consent of the Senate, shall appoint a Governor of the Bank, an alternate for the Governor, and a Director of the Bank.

(b) No person shall be entitled to receive any salary or other compensation from the United States for services as a Governor or Alternate Governor. The Director may, in the discretion of the President, receive such compensation, allowances, and other benefits as, together with those received by him from the Bank, will equal those authorized for [a Chief of Mission, class 2, within the meaning of the Foreign Service Act of 1946, as amended] *a chief of mission under the Foreign Service Act of 1980.*

UNITED NATIONS PARTICIPATION ACT OF 1945

SEC. 2. (a) * * *

* * * * *

(g) All persons appointed in pursuance of authority contained in this section shall receive compensation at rates determined by the President upon the basis of duties to be performed but not in excess of rates authorized by [sections 411 and 412 of the Foreign Service Act of 1946 (Public Law 724, Seventy-ninth Congress) for chiefs of mission] *sections 401, 402, and 403 of the Foreign Service Act of 1980 for chiefs of mission, members of the Senior Foreign Service, and Foreign Service officers occupying positions of equivalent importance, except that no Member of the Senate or House of Representatives or officer of the United States who is designated under subsections (c) and (d) of this section as a representative of the United States or as an alternate to attend any specified session or specified sessions of the General Assembly shall be entitled to receive such compensation.*

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SEC. 8. There is hereby authorized to be appropriated annually to the Department of State, out of any money in the Treasury not otherwise appropriated, such sums as may be necessary for the payment by the United States of its share of the expenses of the United Nations as apportioned by the General Assembly in accordance with article 17 of the Charter, and for all necessary salaries and expenses of the representatives provided for in section 2 hereof, and of their appropriate staffs, including personal services in the District of Columbia and elsewhere, without regard to the civil-service laws and the Classification Act of 1923, as amended; travel expenses without regard to the Standardized Government Travel Regulations, as amended, the Travel Expense Act of 1949, and section 10 of the Act of March 3, 1933, as amended, and, under such rules and regulations as the Secretary of State may prescribe, travel expenses of families and transportation of effects of United States representatives and other personnel in going to and returning from their post of duty; allowances for living quarters, including heat, fuel, and light, as authorized by

the Act approved June 26, 1930 (5 U.S.C. 118a); cost-of-living allowances for personnel stationed abroad under such rules and regulations as the Secretary of State may prescribe; communications services; stenographic reporting, translating, and other services, by contract; hire of passenger motor vehicles and other local transportation; rent of offices; printing and binding without regard to section 11 of the Act of March 1, 1949 (44 U.S.C. 111); allowances and expenses as provided in section 6 of the Act of July 30, 1946 (Public Law 565, Seventy-ninth Congress), and allowances and expenses equivalent to those provided in [section 901(3) of the Foreign Service Act of 1946 (Public Law 724, Seventy-ninth Congress)] *section 905 of the Foreign Service Act of 1980*; the lease or rental (for periods not exceeding ten years) of living quarters for the use of representative of the United States to the United Nations referred to in paragraph (a) of section 2 hereof, the cost of installation and use of telephones in the same manner as telephone service is provided for use of the Foreign Service pursuant to the Act of August 23, 1912, as amended (31 U.S.C. 679), and unusual expenses similar to those authorized by section 22 of the Administrative Expenses Act of 1946, as amended by section 311 of the Overseas Differentials and Allowances Act, incident to the operation and maintenance of such living quarters; and such other expenses as may be authorized by the Secretary of State; and without regard to section 3709 of the Revised Statutes as amended (41 U.S.C. 5).

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SECTION 2 OF THE JOINT RESOLUTION OF JULY 30, 1946

JOINT RESOLUTION Providing for membership and participation by the United States in the United Nations Educational, Scientific, and Cultural Organization, and authorizing an appropriation therefor.

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SEC. 2. The President by and with the consent of the Senate shall designate from time to time to attend a specified session or specified sessions of the General Conference of the Organization not to exceed five representatives of the United States and such number of alternates not to exceed five as he may determine consistent with the rules of procedure of the General Conference: *Provided, however,* That each such representative and each such alternate must be an American citizen. One of the representatives shall be designated as the senior representative. Such representatives and alternates shall each be entitled to receive compensation at such rates provided for [Foreign Service officers in the schedule contained in section 412 of the Foreign Service Act of 1946, as amended,] *members of the Senior Foreign Service under section 402 of the Foreign Service Act of 1980, or provided for Foreign Service officers under section 403 of that Act,* as the President may determine, for such periods as the President may specify, except that no Member of the Senate or House of Representatives or officer of the United States who is designated under this section as a representative of the United States or as an alternate to attend any specified session or specified sessions of the General Conference shall be entitled to receive such compensation. Whenever a representative of the United States is elected by the General Confer-

ence to serve on the Executive Board, or is elected President of the General Conference and thus becomes an ex officio adviser to the Executive Board, under provision of article V of the constitution of the Organization, the President may extend the above provisions for compensation to such representative during periods of service in connection with the Executive Board.

SECTION 2 OF THE JOINT RESOLUTION OF JUNE 14, 1948

JOINT RESOLUTION Providing for membership and participation by the United States in the World Health Organization and authorizing an appropriation therefor.

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SEC. 2. The President shall designate from time to time to attend a specified session or specified sessions of the World Health Assembly of the Organization not to exceed three delegates of the United States and such number of alternates as he may determine consistent with the rules of procedure of the World Health Assembly. One of the delegates shall be designated as the chief delegate. Whenever the United States becomes entitled to designate a person to serve on the Executive Board of the Organization, under article 24 of the constitution of the Organization, the President shall designate a representative of the United States, by and with the advice and consent of the Senate, and may designate not to exceed one alternate to attend sessions of the Executive Board. Such representative must be a graduate of a recognized medical school and have spent not less than three years in active practice as a physician or surgeon. Such representative and any such alternate shall each be entitled to receive compensation at one of the rates [provided by section 412 of the Foreign Service Act of 1946, as amended,] *established under section 402 or 403 of the Foreign Service Act of 1980* for such period or periods as the President may specify, except that no Member of the Senate or House of Representatives or officer of the United States who is thus designated shall be entitled to receive such compensation: *Provided*, That no person shall serve as such representative, delegate, or alternate until such person has been investigated as to loyalty and security by the Civil Service Commission.

SECTION 203 OF THE AFRICAN DEVELOPMENT FUND ACT

SEC. 203. (a) The President, by and with the advice and consent of the Senate, shall appoint a Governor, and an Alternate Governor, of the fund.

(b) The Governor, or in his absence the Alternate Governor, on the instructions of the President, shall cast the votes of the United States for the Director to represent the United States in the Fund. The Director representing the United States and his Alternate, if they are citizens of the United States, may, in the discretion of the President, receive such compensation, allowances, and other benefits

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not exceeding those authorized for [a Chief of Mission, class 2, within the meaning of the Foreign Service Act of 1946, as amended] *a chief of mission under the Foreign Service Act of 1980.*

SECTION 408 OF THE MUTUAL SECURITY ACT OF 1954

SEC. 408. NORTH ATLANTIC TREATY ORGANIZATION.—(a) In order to provide for United States participation in the North Atlantic Treaty Organization, there is hereby authorized to be appropriated such amounts as may be necessary from time to time for the payment by the United States of its share of the expenses of the Organization and all necessary salaries and expenses of the United States permanent representative to the Organization, of such persons as may be appointed to represent the United States in the subsidiary bodies of the Organization or in any multilateral organization which participates in achieving the aims of the North Atlantic Treaty, and of their appropriate staffs, and the expenses of participation in meetings of such organizations, including salaries, expenses, and allowances of personnel and dependents as authorized by the Foreign Service Act of 1980 [1946, as amended (22 U.S.C. 801).] and allowances and expenses as provided in section 6 of the Act of July 30, 1946 (22 U.S.C. 287r).

(b) The United States permanent representative to the North Atlantic Treaty Organization shall be appointed by the President by and with the advice and consent of the Senate and shall hold office at the pleasure of the President. Such representative shall have the rank and status of ambassador extraordinary and plenipotentiary and shall be a chief of mission [, class 1, within the meaning of the Foreign Service Act of 1946, as amended (22 U.S.C. 801)] *under the Foreign Service Act of 1980.*

(c) Persons detailed to the international staff of the North Atlantic Treaty Organization in accordance with [section 529 of this Act who are appointed as Foreign Service Reserve Officers may serve for periods of more than five years notwithstanding the limitation in section 522 of the Foreign Service Act of 1946, as amended (22 U.S.C. 922)] *section 628 of the Foreign Assistance Act of 1961 who are members of the Foreign Service serving under limited appointments may serve for periods of more than five years notwithstanding the limitation in section 309 of the Foreign Service Act of 1980.*

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INTERNATIONAL ATOMIC ENERGY AGENCY PARTICIPATION ACT OF 1957

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SEC. 2. (a) * * * * *
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(d) All persons appointed or designated in pursuance of authority contained in this section shall receive compensation at rates determined by the President upon the basis of duties to be performed

but not in excess of the rates authorized by [sections 411 and 412 of the Foreign Service Act of 1946, as amended (22 U.S.C. 886, 867), for Chiefs of Mission] *sections 401, 402 and 403 of the Foreign Service Act of 1980 for chiefs of mission, members of the Senior Foreign Service, and Foreign Service officers occupying positions of equivalent importance, except that no Member of the Senate or House of Representatives or officer of the United States who is designated under subsection (b) or subsection (c) of this section as a delegate or representative of the United States or as an alternate to attend any specified session or specified sessions of the General Conference shall be entitled to receive such compensation. Any person who receives compensation pursuant to the provisions of this subsection may be granted allowances and benefits not to exceed those received [by Chiefs of Mission] under the Foreign Service Act of 1980 by chiefs of missions, members of the Senior Foreign Service, and Foreign Service officers occupying positions of equivalent importance.*

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SEC. 5. There is hereby authorized to be appropriated annually to the Department of State, out of any money in the Treasury not otherwise appropriated, such sums as may be necessary for the payment by the United States of its share of the expenses of the International Atomic Energy Agency as apportioned by the Agency in accordance with paragraph (D) of article XIV of the Statute of the Agency, and for all necessary salaries and expenses of the representatives provided for in section 2 hereof and of their appropriate staffs, including personal services without regard to the civil service laws and the Classification Act of 1949, as amended; travel expenses without regard to the Standardized Government Travel Regulations, as amended, the Travel Expense Act of 1949, as amended, and section 10 of the Act of March 3, 1933, as amended; salaries as authorized by the Foreign Service Act of [1946, as amended] 1980; or as authorized by the Atomic Energy Act of 1954, as amended, and expenses and allowances of personnel and dependents as authorized by the Foreign Service Act of [1946, as amended;] 1980; services as authorized by section 15 of the Act of August 2, 1946 (5 U.S.C. 55a); translating and other services, by contract; hire of passenger motor vehicles and other local transportation; printing and binding without regard to section II of the Act of March 1, 1919 (44 U.S.C. 111); official functions and courtesies; such sums as may be necessary to defray the expenses of United States participation in the Preparatory Commission for the Agency, established pursuant to annex I of the Statute of the Agency; and such other expenses as may be authorized by the Secretary of State.

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SECTION 704 OF THE CENTER FOR CULTURAL AND TECHNICAL INTERCHANGE BETWEEN EAST AND WEST ACT OF 1960

SEC. 704. (a) In carrying out the provisions of this chapter, the Secretary may utilize his authority under the provisions of the United

States Information and Educational Exchange Act of 1948, as amended.

(b) The Secretary may, in administering the provisions of this chapter, accept from public and private sources money and property to be utilized in carrying out the purposes and functions of the Center. In utilizing any gifts, bequests, or devises accepted there shall be available to the Secretary the same authorities as are available to him in accepting and utilizing gifts, bequests, and devises to the Foreign Service Institute under the provisions of the [title X, part C of the Foreign Service Act of 1946, as amended] *section 25 of the State Department Basic Authorities Act of 1956*. For the purposes of Federal income, estate, and gift taxes, any gift, devise, or bequest accepted by the Secretary under the authority of this chapter shall be deemed to be a gift, devise, or bequest to or for the use of the United States.

(c) The Secretary shall make an annual report to the Congress with respect to his activities under the provisions of this chapter, and such report shall include any recommendations for needed revisions in this chapter.

SECTION 104 OF THE MUTUAL EDUCATIONAL AND CULTURAL EXCHANGE ACT OF 1961

SEC. 104. (a) The President may delegate, to such officers of the Government as he determines to be appropriate, any of the powers conferred upon him by this Act to the extent that he finds such delegation to be in the interest of the purposes expressed in this Act and the efficient administration of the programs undertaken pursuant to this Act: *Provided*, That where the President has delegated any of such powers to any officer, before the President implements any proposal for the delegation of any of such powers to another officer, that proposal shall be submitted to the Speaker of the House of Representatives and to the Committee on Foreign Relations of the Senate, and thereafter a period of not less than sixty days shall have elapsed while Congress is in session. In computing such sixty days, there shall be excluded the days on which either House is not in session because of an adjournment of more than three days.

(b) The President is authorized to employ such other personnel as he deems necessary to carry out the provisions and purposes of this Act, and of such personnel not to exceed ten may be compensated without regard to the provisions of the Classification Act of 1949, as amended, but not in excess of the highest rate of grade 18 of the general schedule established by such Act. Such positions shall be in addition to the number authorized by section 505 of the Classification Act of 1949, as amended.

[(c) For the purpose of performing functions under this Act outside the United States, including participation in binational or multinational foundations or commissions, the Secretary of State may employ or assign or authorize the employment or assignment for the duration of operations under this Act of persons in or to the Foreign Service Reserve or Foreign Service Staff and alien clerks and employees in accordance with applicable provisions of the Foreign Service Act of 1946, as amended (22 U.S.C. 801).]

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(d) For the purpose of performing functions under this Act outside the United States, the President is authorized to provide that any person employed or assigned by a United States Government agency shall be entitled, except to the extent that the President may specify otherwise in cases in which the period of employment or assignment exceeds thirty months, to the same benefits as are provided by [section 528 of the Foreign Service Act of 1946, as amended (22 U.S.C. 928)], for persons appointed to the Foreign Service Reserve and, except for policymaking officials, the provisions of section 1005 of the Foreign Service Act of 1946, as amended (22 U.S.C. 807), shall apply in the case of such persons] *section 310 of the Foreign Service Act of 1980 for individuals appointed to the Foreign Service.*

SECTION 5 OF THE MIGRATION AND REFUGEE ASSISTANCE ACT OF 1962

SEC. 5. (a) Funds made available for the purposes of this Act shall be available for—

(1) compensation, allowances, and travel of personnel, including *members of the Foreign Service* [personnel] whose services are utilized primarily for the purpose of this Act, and without regard to the provisions of any other law, for printing and binding, and for expenditures outside the United States for the procurement of supplies and services and for other administrative and operating purposes (other than compensation of personnel) without regard to such laws and regulations governing the obligation and expenditure of Government funds as may be necessary to accomplish the purposes of this Act;

(2) employment or assignment of [Foreign Service Reserve officers] *members of the Foreign Service serving under limited appointments* for the duration of operations under this Act;

(3) exchange of funds without regard to section 3651 of the Revised Statutes (31 U.S.C. 543), and loss by exchanges;

(4) expenses authorized by the Foreign Service Act of [1946, as amended (22 U.S.C. 801 et seq.)] 1980, not otherwise provided for;

(5) expenses authorized by the Act of August 1, 1956 (70 Stat. 890-892), as amended; and

(6) all other expenses determined by the President to be necessary to carry out the purposes of this Act.

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SECTION 403 OF THE INTERNATIONAL DEVELOPMENT COOPERATION ACT OF 1979

FUNCTIONS OF THE INSTITUTE

SEC. 403. (a) In carrying out its purposes, the Institute shall—

(1) assist developing countries to strengthen their own scientific and technological capacity in order for them to undertake the research and experimentation necessary for development;

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(2) support research, in the United States and in developing countries, on critical development problems, with emphasis on research relating to technologies which are labor-intensive or which do not generate additional unemployment or underemployment and with emphasis on those problems which are the greatest impediment to improvement in the lives of the majority of the poor;

(3) foster the exchange of scientists and other technological experts with developing countries, and other forms of exchange and communication to promote the joint solution of problems of mutual concern to the United States and developing countries;

(4) advise and assist other agencies of the United States Government in planning and executing policies and programs of scientific and technological cooperation with developing countries;

(5) facilitate the participation of private United States institutions, businesses, and individuals in scientific and technological cooperation with developing countries; and

(6) gather, analyze, and disseminate information relevant to the scientific and technological needs of developing countries.

(b) In carrying out the functions specified in subsection (a), the Institute shall take particular care to review all of its programs, projects, and other activities to ensure that technologies which are developed, utilized, or promoted are assessed with regard to minimizing any new problems and that participants in such programs, projects, and activities are fully aware of the need for such review with respect to any technology-related activities for which they are responsible.

(c) For purposes of carrying out the functions of the Institute, the President may utilize, in addition to authorities conferred by this title, such authority contained in the Foreign Assistance Act of 1961, the [Foreign Service Act of 1946] *Foreign Service Act of 1980*, title V of the Foreign Relations Authorization Act, Fiscal Year 1979, and title IV of the International Development and Food Assistance Act of 1978, as the President deems necessary.

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THE ACT OF AUGUST 28, 1954

AN ACT To provide for greater stability in agriculture; to augment the marketing and disposal of agricultural products; and for other purposes.

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TITLE VI—AGRICULTURAL ATTACHES

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Subtitle B—United States Agricultural Trade Offices

SEC. 605A. (a) * * *

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(h) Upon the request of the Secretary of Agriculture, the Secretary of State shall request for Agricultural Trade Officers and per-

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sonnel of United States Agricultural Trade Offices diplomatic privileges and immunities equivalent to those enjoyed by [Foreign Service personnel] *members of the Foreign Service* of comparable rank and salary.

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SEC. 606D. The Secretary of Agriculture may, under such rules and regulations as may be prescribed by the President or his designee, provide to personnel appointed or assigned by the Secretary of Agriculture under this title or other authority allowances and benefits similar to those provided by [title IX of the Foreign Service Act of 1946] *chapter 9 of title I of the Foreign Service Act of 1980*. Leaves of absence for personnel under this title shall be on the same basis as is provided for the Foreign Service of the United States by the Annual and Sick Leave Act of 1951 (5 U.S.C. 2061).

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SECTION 2002 OF TITLE 10, UNITED STATES CODE

§ 2002. Dependents of members of armed forces: language training.

(a) Notwithstanding [section 1041 of title 22] *section 701(b) of the Foreign Service Act of 1980* or any other provision of law, and under regulations to be prescribed by the Secretary of Defense or, with respect to the Coast Guard when it is not operating as a service in the Navy, the Secretary of Transportation, language training may be provided in—

- (1) a facility of the Department of Defense;
- (2) a facility of the Foreign Service Institute established under [section 1041 of title 22] *section 701(a) of the Foreign Service Act of 1980*; or
- (3) a civilian educational institution;

to a dependent of a member of the armed forces in anticipation of the member's assignment to permanent duty outside the United States.

(b) For the purposes of this section, the word "dependent" has the same meaning that it has under section 401 of title 37.

SECTION 8 OF THE DEFENSE DEPARTMENT OVERSEAS TEACHERS PAY AND PERSONNEL PRACTICES ACT

COST-OF-LIVING ALLOWANCES AND POST DIFFERENTIAL

SEC. 8. (a) Under regulations which shall be prescribed by or under authority of the President, each teacher (other than a teacher employed in a substitute capacity) shall be entitled, in addition to basic compensation, to—

- (1) cost-of-living allowances equal to those authorized by [section 901(2) of the Foreign Service Act of 1946 (22 U.S.C. 1131(2))] *section 5924 of title 5, United States Code*, and

(2) additional compensation equal to that authorized under section 207 of the Independent Offices Appropriation Act, 1949 (5 U.S.C. 118h).

INTERNAL REVENUE CODE OF 1954

Subtitle A—Income Taxes

CHAPTER 1—NORMAL TAXES AND SURTAXES

Subchapter B—Computation of Taxable Income

PART III—ITEMS SPECIFICALLY EXCLUDED FROM GROSS INCOME

SEC. 104. COMPENSATION FOR INJURIES OR SICKNESS.

(a) **IN GENERAL.**—Except in the case of amounts attributable to (and not in excess of) deductions allowed under section 213 (relating to medical, etc., expenses) for any prior taxable year, gross income does not include—

(1) amounts received under workmen's compensation acts as compensation for personal injuries or sickness;

(2) the amount of any damages received (whether by suit or agreement) on account of personal injuries or sickness;

(3) amounts received through accident or health insurance for personal injuries or sickness (other than amounts received by an employee, to the extent such amounts (A) are attributable to contributions by the employer which were not includible in the gross income of the employee, or (B) are paid by the employer);

(4) amounts received as a pension, annuity, or similar allowance for personal injuries or sickness resulting from active service in the armed forces of any country or in the Coast and Geodetic Survey or the Public Health Service, or as a disability annuity payable under the provisions of [section 831 of the Foreign Service Act of 1946, as amended (22 U.S.C. 1081)] *section 808 of the Foreign Service Act of 1980*; and

(5) amounts received by an individual as disability income attributable to injuries incurred as a direct result of a violent attack which the Secretary of State determines to be a terrorist attack and which occurred while such individual was an employee of the United States engaged in the performance of his official duties outside the United States.

For purposes of paragraph (3), in the case of an individual who is, or has been, an employee within the meaning of section 401(c)(1) (relating to self-employed individuals), contributions made on behalf of such individual while he was such an employee to a trust described in section 401(a) which is exempt from tax under section 501(a), or under a plan described in section 403(a), shall, to the extent allowed as deductions under section 404, be treated as contributions by the employer which were not includible in the gross income of the employee.

PART VI—ITEMIZED DEDUCTIONS FOR INDIVIDUALS AND CORPORATIONS

SEC. 170. CHARITABLE, ETC., CONTRIBUTIONS AND GIFTS.

(a) ALLOWANCE OF DEDUCTION.—

(i) OTHER CROSS REFERENCES.—

(1) For charitable contributions of estate and trusts, see section 642(c).

(2) For nondeductibility of contributions by common trust funds, see section 584.

(3) For charitable contributions of partners, see section 702.

(4) For charitable contributions of nonresident aliens, see section 873.

(5) For treatment of gifts for benefit of or use in connection with the Naval Academy as gifts to or for the use of the United States, see section 6973 of title 10, United States Code.

[(6) For treatment of gifts accepted by the Secretary of State under the Foreign Service Act of 1946 as gifts to or for the use of the United States, see section 1021(e) of that Act (22 U.S.C. 809(e)).]

(6) For treatment of gifts accepted by the Secretary of State, the Director of the International Communication Agency, or the Director of the United States International Development Cooperation Agency, as gifts to or for the use of the United States, see section 25 of the State Department Basic Authorities Act of 1956.

Subchapter N—Tax Based on Income From Sources Within or Without the United States

PART III—INCOME FROM SOURCES WITHOUT THE UNITED STATES

Subpart B—Earned Income of Citizens of United States

SEC. 912. EXEMPTION FOR CERTAIN ALLOWANCES.

The following items shall not be included in gross income, and shall be exempt from taxation under this subtitle:

(1) FOREIGN AREAS ALLOWANCES.—In the case of civilian officers and employees of the Government of the United States, amounts received as allowances or otherwise (but not amounts received as post differentials) under—

[(A) title IX of the Foreign Service Act of 1946, as amended (22 U.S.C., sec. 1131 and following),]

(A) chapter 9 of title I of the Foreign Service Act of 1980,

Subtitle B—Estate and Gift Taxes

CHAPTER 11—ESTATE TAX

Subchapter A—Estates of Citizens or Residents

PART IV—TAXABLE ESTATE

SEC. 2055. TRANSFERS FOR PUBLIC, CHARITABLE, AND RELIGIOUS USES.

(a) IN GENERAL.— * * *

(f) CROSS REFERENCES.—

(1) * * *

[(5) For treatment of gifts, devises, or bequests accepted by the Secretary of State under the Foreign Service Act of 1946 as gifts, devises, or bequests to or for the use of the United States, see section 1021(e) of that Act (22 U.S.C. 809(e)).]

(5) For treatment of gifts, devises, or bequests accepted by the Secretary of State, the Director of the International Communication Agency, or the Director of the United States International Development Cooperation Agency as gifts, devises, or bequests to or for the use of the United States, see section 25 of the State Department Basic Authorities Act of 1956.

SECTION 415 OF THE DOMESTIC VOLUNTEER SERVICE ACT OF 1973

APPLICATION OF FEDERAL LAW

SEC. 415. (a) * * *

(c) Any period of service of a volunteer enrolled in a program for a period of service of at least one year under part A of title I of this

Act, and any period of full-time service of a volunteer enrolled in a program for a period of service of at least one year under part B or C of title I of this Act, shall be credited in connection with subsequent employment in the same manner as a like period of civilian employment by the United States Government—

(1) for the purposes of [section 852(a)(1) of the Foreign Service Act of 1946, as amended (22 U.S.C. 1092(a)(1)), and every other] any Act establishing a retirement system for civilian employees of any United States Government agency; and

(2) except as otherwise determined by the President, for the purposes of determining seniority, reduction in force, and layoff rights, leave entitlement, and other rights and privileges based upon length of service under the laws administered by the Office of Personnel Management, the Foreign Service Act of [1946,] 1980, and every other Act establishing or governing terms and conditions of service of civilian employees of the United States Government: *Provided*, That service of a volunteer shall not be credited toward completion of any probationary or trial period or completion of any service requirement for career appointment.

* * * * *

SECTION 405a OF TITLE 37, UNITED STATES CODE

§ 405a. Travel and transportation allowances: evacuation allowances

(a) Under regulations prescribed by the Secretaries concerned, when dependents of members of the uniformed services are ordered [evacuated] to depart by competent authority they may be authorized such allowances as the Secretary concerned determines necessary to offset the expenses incident to the [evacuation] departure. Allowances authorized by this section are in addition to those authorized by any other section of this title. For the purposes of this section, a dependent "ordered [evacuated] to depart by competent authority" includes—

(1) a dependent who is present at or in the vicinity of the member's duty station when the [evacuation] departure of dependents is ordered by competent authority and who actually moves to an authorized safe haven designated by that authority, whether such safe haven is at or in the vicinity of the member's duty station or elsewhere;

(2) a dependent who established a household at or in the vicinity of the member's duty station but who is temporarily absent therefrom for any reason when [evacuation] departure of dependents is ordered by competent authority; and

(3) a dependent who was authorized to join the member and who departed from his former place of residence incident to joining the member but who, as a result of the [evacuation] departure of dependents, is diverted to a safe haven designated by competent authority or is authorized to travel to a place the dependent may designate, even though he was in the United States when the [evacuation] departure was ordered.

* * * * *

SECTION 235 OF TITLE 38, UNITED STATES CODE

§ 235. Benefits to employees at overseas offices who are United States citizens

The Administrator may, under such rules and regulations as may be prescribed by the President or his designee, provide to personnel of the Veterans' Administration who are United States citizens and are assigned by the Administrator to the Veterans' Administration offices in the Republic of the Philippines allowances and benefits similar to those provided by the following provisions of law:

(1) Section [1131 of title 22] *905 of the Foreign Service Act of 1980* (relating to allowances to provide for the proper representation of the United States).

(2) [Section 1136 (1), (2), (3), (4), (5), (7), and (11) of title 22] *Sections 901 (1), (2), (3), (4), (7), (8), (9), (11), and (12) of the Foreign Service Act of 1980* (relating to travel expenses).

(3) Section [1138 of title 22] *901(13) of the Foreign Service Act of 1980* (relating to transportation of automobiles).

(4) Section [1148 of title 22] *903 of the Foreign Service Act of 1980* (relating to the return of personnel to the United States on leave of absence).

(5) Section [1156 of title 22] *904(d) of the Foreign Service Act of 1980* (relating to payments by the United States of expenses for treating illness or injury of officers or employees and dependents requiring hospitalization).

(6) Section 5724a(a)(3) of title 5 (relating to subsistence expenses for 30 days in connection with the return to the United States of the employee and such employee's immediate family).

(7) Section 5724a(a)(4) of title 5 (relating to the sale and purchase of the residence or settlement of an unexpired lease of the employee when transferred from one station to another station and both stations are in the United States, its territories or possessions, or the Commonwealth of Puerto Rico).

The foregoing authority supplements, but is not in lieu of, other allowances and benefits for overseas employees of the Veterans' Administration provided by titles 5 and 22.

TITLE 5, UNITED STATES CODE

* * * * *

PART III—EMPLOYEES

* * * * *

Subpart B—Employment and Retention

* * * * *

**CHAPTER 33—EXAMINATION, SELECTION, AND
PLACEMENT**

* * * * *
**SUBCHAPTER I—EXAMINATION, CERTIFICATION,
AND APPOINTMENT**
* * * * *

**§ 3323. Automatic separations; reappointment; reemployment of
annuitants**

(a) An individual who reaches the retirement age prescribed for automatic separation applicable to him may not be continued in the civil service or in the government of the District of Columbia. An individual separated on account of age under a statute or regulation providing for retirement on account of age is not eligible for appointment in the civil service or in the government of the District of Columbia. The President, when in his judgment the public interest so requires, may except an individual from this subsection by Executive order. This subsection does not apply to an individual named by a statute providing for the continuance of the individual in the civil service or in the government of the District of Columbia.

(b) Notwithstanding other statutes, an annuitant as defined by section 8331 of this title receiving annuity from the Civil Service Retirement and Disability Fund is not barred by reason of his retired status from employment in an appointive position for which he is qualified. An annuitant so reemployed serves at the will of the appointing authority.

(c) Notwithstanding subsection (a) of this section, a [Foreign Service officer retired under section 1001 or 1002 of title 22 or a Foreign Service staff officer or employee retired under section 1063 of title 22] *member of the Foreign Service retired under section 812 of the Foreign Service Act of 1980* is not barred by reason of his retired status from employment in a position in the civil service for which he is qualified. An annuitant so reemployed serves at the will of the appointing authority.

* * * * *
**CHAPTER 35—RETENTION PREFERENCE,
RESTORATION, AND REEMPLOYMENT**

SUBCHAPTER I—RETENTION PREFERENCE

SEC.

- 3501. Definitions; application.
- 3502. Order of retention.
- 3503. Transfer of functions.
- 3504. Preference eligible; retention; physical qualifications; waiver.

**SUBCHAPTER II—RESTORATION AFTER ACTIVE DUTY OR
TRAINING DUTY**

- 3551. Restoration; Reserves and National Guardsmen.

**SUBCHAPTER III—REINSTATEMENT OR RESTORATION AFTER
SUSPENSION OR REMOVAL FOR NATIONAL SECURITY**

3571. Reinstatement or restoration; individual suspended or removed for national security.

SUBCHAPTER IV—REEMPLOYMENT AFTER SERVICE WITH AN INTERNATIONAL ORGANIZATION

3581. Definitions.
3582. Rights of transferring employees.
3583. Computations.
3584. Regulations.

**SUBCHAPTER V—REMOVAL, REINSTATEMENT, AND GUARANTEED
PLACEMENT IN THE SENIOR EXECUTIVE SERVICE**

3591. Definitions.
3592. Removal from the Senior Executive Service.
3593. Reinstatement in the Senior Executive Service.
3594. Guaranteed placement in other personnel systems.
3595. Regulations.

SUBCHAPTER VI—REEMPLOYMENT FOLLOWING LIMITED APPOINTMENT IN THE FOREIGN SERVICE

3597. *Reemployment following limited appointment in the Foreign Service.*

* * * * *

SUBCHAPTER VI—REEMPLOYMENT FOLLOWING LIMITED APPOINTMENT IN THE FOREIGN SERVICE

§ 3597. *Reemployment following limited appointment in the Foreign Service*

An employee of any agency who accepts, with the consent of the head of that agency, a limited appointment in the Foreign Service under section 309 of the Foreign Service Act of 1980 is entitled, upon the expiration of that appointment, to be reemployed in that employee's former position or in a corresponding or higher position in that agency. Upon reemployment under this section, an employee shall be entitled to any within-grade increases in pay which the employee would have received if the employee had remained in the former position in the agency.

* * * * *

Subpart D—Pay and Allowances

CHAPTER 51—CLASSIFICATION

* * * * *

§ 5102. Definitions; application

(a) * * *

* * * * *

(c) This chapter does not apply to—

(1) Repealed. Pub. L. 91-375, § 6(c)(9), Aug. 12, 1970, 84 Stat. 776;

(2) [employees in the Foreign Service of the United States whose pay is fixed under chapter 14 of title 22] *members of the Foreign Service whose pay is fixed under the Foreign Service Act of 1980*; and positions in or under the Department of State which are—

(A) connected with the representation of the United States to international organizations; or

(B) specifically exempted by statute from this chapter or other classification or pay statute;

* * * * *

CHAPTER 53—PAY RATES AND SYSTEMS

* * * * *

SUBCHAPTER I—PAY COMPARABILITY SYSTEM

§ 5301. Policy

(a) * * *

* * * * *

(c) For the purpose of this subchapter, “statutory pay system” means a pay system under—

(1) subchapter III of this chapter, relating to the General Schedule; *or*

[(2) subchapter IV of chapter 14 of title 22, relating to the Foreign Service of the United States; or]

[(3)] (2) chapter 73 of title 38, relating to the Department of Medicine and Surgery, Veterans’ Administration.

* * * * *

§ 5303. Higher minimum rates; Presidential authority

(a) When the President finds that the pay rates in private enterprise for one or more occupations in one or more areas or locations are so substantially above the pay rates of statutory pay schedules as to handicap significantly the Government’s recruitment or retention of well-qualified individuals in positions paid under—

(1) section 5332 of this title; *or*

[(3)] (2) the pay scales for physicians, dentists, and nurses in the Department of Medicine and Surgery, Veterans’ Administration, under chapter 73 of title 38 [; or].

[(4) sections 867 and 870 of title 22;]

he may establish for the areas or locations higher minimum rates of basic pay for one or more grades or levels, occupational groups, series, classes, or subdivisions thereof, and may make corresponding increases in all step rates of the pay range for each such grade or level. However, a minimum rate so established may not exceed the maximum pay rate prescribed by statute for the grade or level. The President may authorize the exercise of the authority conferred on him by this section by the Office of Personnel Management or, in the case of individuals not subject to the provisions of this title governing appointment in the competitive service, by such other agency as he may designate.

* * * * *

§ 5304. Presidential policies and regulations

The functions, duties, and regulations of the agencies and the Office of Personnel Management with respect to this subchapter, subchapter III of this chapter, chapter 51 of this title, [chapter 14 of title 22] *the Foreign Service Act of 1980*, and the provisions of chapter 73 of title 38 relating to employees in the Department of Medicine and Surgery, Veterans' Administration, are subject to such policies and regulations as the President may prescribe. Among other things, the policies and regulations of the President may provide for—

- (1) preparing and reporting to him the annual comparison of Federal pay rates with private enterprise rates;
- (2) obtaining and reporting to him the views of employee organizations on the annual comparison, and on other pay matters;
- (3) reviewing and reporting to him on the adequacy of the Federal statutory pay structures for the Federal programs to which they apply;
- (4) reviewing the relationship of Federal statutory pay rates and private enterprise pay rates in specific occupation and local areas; and
- (5) providing step-increases in recognition of high quality performance and providing for properly relating supervisory pay rates paid under one system to those of subordinates paid under another system.

* * * * *

SUBCHAPTER II—EXECUTIVE SCHEDULE PAY RATES

* * * * *

§ 5313. Positions at level II

Level II of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

Deputy Secretary of Defense.
Deputy Secretary of State.
Administrator, Agency for International Development.
Administrator of the National Aeronautics and Space Administration.
Administrator of Veterans' Affairs.
Deputy Secretary of the Treasury.
Deputy Secretary of Transportation.
Chairman, Nuclear Regulatory Commission.
Chairman, Council of Economic Advisers.
Chairman, Board of Governors of the Federal Reserve System.
Director of the Bureau of the Budget.
Director of the Office of Science and Technology.
Director of the United States Arms Control and Disarmament Agency.
Director of the United States Information Agency.
Director of Central Intelligence.
Secretary of the Air Force.
Secretary of the Army.

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Secretary of the Navy.
Administrator, Federal Aviation Administration.
Director of the National Science Foundation.
Deputy Attorney General.
Director of the Special Action Office for Drug Abuse
Prevention.
Deputy Secretary of Energy.
Deputy Secretary of Agriculture.
Director of the Office of Personnel Management.
Ambassadors at Large.

* * * * *

CHAPTER 55—PAY ADMINISTRATION

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SUBCHAPTER III—ADVANCEMENT ALLOCATION, AND ASSIGNMENT OF PAY

* * * * *

§ 5522. Advance payments; rates; amounts recoverable

(a) The head of each agency may provide for the advance payment of the pay, allowances, and differentials, or any of them, covering a period of not more than 30 days, to or for the account of each employee of the agency (or, under emergency circumstances and on a reimbursable basis, an employee of another agency) whose [evacuation] *departure* (or that of his dependents or immediate family, as the case may be) from a place inside or outside the United States [is ordered for military or other reasons which create imminent danger to the life or lives of the employee or of his dependents or immediate family.] *is officially authorized or ordered—*

(1) *from a place outside the United States from which the Secretary of State determines it is in the national interest to require the departure of some or all employees, their dependents, or both; or*

(2) *from any place where there is imminent danger to the life of the employee or the lives of the dependents or immediate family of the employee.*

(b) Subject to adjustment of the account of an employee under section 5524 of this title and other applicable statute, the advance payment of pay, allowances, and differentials is at rates currently authorized with respect to the employee on the date the advance payment is made under agency procedures governing advance payments under this subsection. The rates so authorized may not exceed the rates to which the employee was entitled immediately before issuance of the [evacuation] *departure* order.

* * * * *

§ 5523. Duration of payments; rates; active service period

(a) The head of each agency may provide for—

(1) the payment of monetary amounts covering a period of not more than 60 days to or for the account of each employee of the agency (or, under emergency circumstances and on a reimbursable basis, an employee of another agency)—

[(A) whose evacuation from a place inside or outside the United States is ordered for military or other reasons which create imminent danger to the life of the employee; and]

(A) whose departure is authorized or ordered under section 5522(a) of this title; and

(B) who is prevented, by circumstances beyond his control and beyond the control of the Government of the United States or the government of the District of Columbia, or both, as the case may be, from performing the duties of the position which he held immediately before issuance of the [evacuation] departure order; and

(2) the termination of payment of the monetary amounts.

The President, with respect to the Executive agencies, may extend the 60-day period for not more than 120 additional days if he determines that the extension of the period is in the interest of the United States.

(b) Subject to adjustment of the account of an employee under section 5524 of this title and other applicable statute, each payment under this section is at rates of pay, allowances, and differentials, or any of them, currently authorized with respect to the employee on the date payment is made under agency procedures governing payments under this section. The rates so authorized may not exceed the rates to which the employee was entitled immediately before issuance of the [evacuation] departure order. An employee in an Executive agency may be granted such additional allowance payments as the President determines necessary to offset the direct added expenses incident to the [evacuation] departure.

* * * * *

SUBCHAPTER V—PREMIUM PAY

§ 5541. Definitions

For the purpose of this subchapter—

(1) "agency" means—

- (A) an Executive agency;
- (B) a military department;
- (C) an agency in the judicial branch;
- (D) the Library of Congress;
- (E) the Botanic Garden;
- (F) the Office of the Architect of the Capitol; and
- (G) the government of the District of Columbia; and

(2) "employee" means—

- (A) an employee in or under an Executive agency;
- (B) an individual employed by the government of the District of Columbia; and
- (C) an employee in or under the judicial branch, the Library of Congress, the Botanic Garden, and the Office of the Architect of the Capitol, who occupies a position subject to chapter 51 and subchapter III of chapter 53 of this title;

but does not include—

- (i) a justice or judge of the United States;
- (ii) the head of an agency other than the government of the District of Columbia;

(iii) a teacher, school official, or employee of the Board of Education of the District of Columbia, whose pay is fixed under chapter 15 of title 31, District of Columbia Code;

(iv) a member of the Metropolitan Police, the Fire Department of the District of Columbia, the United States Park Police, or the Executive Protection Service;

(v) a student-employee as defined by section 5351 of this title;

(vi) Repealed. Pub. L. 91-375, § 6(c)(16), Aug. 12, 1970, 84 Stat. 776;

(vii) an employee outside the continental United States or in Alaska who is paid in accordance with local native prevailing wage rates for the area in which employed;

(viii) an employee of the Tennessee Valley Authority;

(ix) an individual to whom section 1291(a) of title 50, appendix, applies;

(x) an employee of a Federal land bank, Federal intermediate credit bank, on a bank for cooperatives;

(xi) an employee whose pay is fixed and adjusted from time to time in accordance with prevailing rates under subchapter IV of chapter 53 of this title, or by a wage board or similar administrative authority serving the same purpose, except as provided by section 5544 of this title;

(xii) an employee of the Transportation Corps of the Army on a vessel operated by the United States, a vessel employee of the Environmental Science Services Administration, a vessel employee of the Department of the Interior, or a vessel employee of the Panama Canal Commission;

(xiii) a "teacher" or an individual holding a "teaching position" as defined by section 901 of title 20;

[(xiv) a "Foreign Service officer" within the meaning of section 401 of the Foreign Service Act of 1946;

[(xv) a "Foreign Service information officer" as provided for by the first section of the Act entitled "An Act to promote the foreign policy of the United States by strengthening and improving the Foreign Service personnel system of the International Communication Agency through establishment of a Foreign Service Information Officer Corps", approved August 20, 1968; or]

(xiv) a member of the Senior Foreign Service; or

[(xvi)] (xv) member of the Senior Executive Service.

SUBCHAPTER IX—SEVERANCE PAY AND BACK PAY

§ 5595. Severance pay

(a) For the purpose of this section—

(1) * * *

(2) "employee" means—

(A) an individual employed in or under an agency; and

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(B) an individual employed by a county committee established under section 590h(b) of title 16; but does not include—

(i) * * *

* * * * *

(vi) an employee who, at the time of separation from the service, is entitled to receive *benefits under section 609(b)(1) of the Foreign Service Act of 1980 or any other severance pay from the Government;*

* * * * *

§ 5596. Back pay due to unjustified personnel action

(a) * * *

(b) (1) An employee of an agency who, on the basis of a timely appeal or an administrative determination (including a decision relating to an unfair labor practice or a grievance) is found by appropriate authority under applicable law, rule, regulation, or collective bargaining agreement, to have been affected by an unjustified or unwarranted personnel action which has resulted in the withdrawal or reduction of all or part of the pay, allowances, or differentials of the employee—

(A) is entitled, on correction of the personnel action, to receive for the period for which the personnel action was in effect—

(i) an amount equal to all or part of the pay, allowances, or differentials, as applicable which the employee normally would have earned or received during the period if the personnel action had not occurred, less any amounts earned by the employee through other employment during that period; and

(ii) reasonable attorney fees related to the personnel action which, with respect to any decision relating to an unfair labor practice or a grievance processed under a procedure negotiated in accordance with chapter 71 of this title, *or under chapter 11 of title I of the Foreign Service Act of 1980*, shall be awarded in accordance with standards established under section 7701(g) of this title; and

(B) for all purposes, is deemed to have performed service for the agency during that period, except that—

(i) annual leave restored under this paragraph which is in excess of the maximum leave accumulation permitted by law shall be credited to a separate leave account for the employee and shall be available for use by the employee within the time limits prescribed by regulations of the Office of Personnel Management, and

(ii) annual leave credited under clause (i) of this subparagraph but unused and still available to the employee under regulations prescribed by the Office shall be included in the lump-sum payment under section 5551 or 5552(1) of this title but may not be retained to the credit of the employee under section 5552(2) of this title.

(2) This subsection does not apply to any reclassification action nor authorize the setting aside of an otherwise proper promotion by a selecting official from a group of properly ranked and certified candidates.

(3) For the purpose of this subsection, "grievance" and "collective bargaining agreement" have the meanings set forth in section 7103 of this title *and (with respect to members of the Foreign Service) in sections 1101 and 1002 of the Foreign Service Act of 1980*, "unfair labor practice" means an unfair labor practice described in section 7116 of this title *and (with respect to members of the Foreign Service) in section 1015 of the Foreign Service Act of 1980*, and "personnel action" includes the omission or failure to take an action or confer a benefit.

* * * * *

CHAPTER 57—TRAVEL, TRANSPORTATION, AND SUBSISTENCE

* * * * *

SUBCHAPTER II—TRAVEL AND TRANSPORTATION EX- PENSES; NEW APPOINTEES, STUDENT TRAINEES, AND TRANSFERRED EMPLOYEES

* * * * *

§ 5724. Travel and transportation expenses of employees trans- ferred; advancement of funds; reimbursement on com- muted basis

(a) * * *

(g) The allowances authorized by this section do not apply to an employee transferred under [chapter 14 of title 22] *the Foreign Service Act of 1980*.

§ 5727. Transportation of motor vehicles

(a) * * *

(e) (1) This section, except subsection (a), does not apply to—
(A) the Foreign Service of the United States; or
(B) the Central Intelligence Agency.

[(2) This section, except subsection (a), does not affect—
[(A) section 1138 of title 22; or
[(B) section 403e(4) of title 50.]

(2) *This section, except subsection (a), does not affect section 403e(4) of title 50.*

* * * * *

CHAPTER 59—ALLOWANCES

SUBCHAPTER I—UNIFORMS

- Sec.
5901. Uniform allowances.
5902. Increase in maximum uniform allowance.
5903. Regulations.

SUBCHAPTER II—QUARTERS

5911. Quarters and facilities; employees in the United States.
5912. Quarters in Government owned or rented buildings; employees in foreign countries.
5913. Official residence expenses.

SUBCHAPTER III—OVERSEAS DIFFERENTIALS AND
ALLOWANCES

- 5921. Definitions.
- 5922. General provisions.
- 5923. Quarters allowances.
- 5924. Cost-of-living allowances.
- 5925. Post differentials.
- 5926. Compensatory time off at certain posts in foreign areas.
- 5927. *Advances of pay.*
- 5928. *Danger pay allowance.*

SUBCHAPTER III—OVERSEAS DIFFERENTIALS AND
ALLOWANCES

§ 5924. Cost-of-living allowances

The following cost-of-living allowances may be granted, when applicable, to an employee in a foreign area :

(1) * * *

(3) A separate maintenance allowance to assist an employee who is compelled *or authorized*, because of dangerous, notably unhealthful, or excessively adverse living conditions at the employee's post of assignment in a foreign area, or for the convenience of the Government, *or who requests such an allowance because of special needs or hardship involving the employee or the employee's spouse or dependents*, to meet the additional expenses of maintaining, elsewhere than at the post, the employee's spouse or dependents, or both.

(4) An education allowance or payment of travel costs to assist an employee with the extraordinary and necessary expenses, not otherwise compensated for, incurred because of his service in a foreign area or foreign areas in providing adequate education for his dependents, as follows:

(A) An allowance not to exceed the cost of obtaining such kindergarten, elementary and secondary educational services as are ordinarily provided without charge by the public schools in the United States, plus, in those cases when adequate schools are not available at the post of the employee, board and room, and periodic transportation between that post and the nearest locality where adequate schools are available, without regard to section 529 of title 31. The amount of the allowance granted shall be determined on the basis of the educational facility used.

(B) The travel expenses of dependents of an employee to and from a school in the United States to obtain an American secondary or undergraduate college education, not to exceed [(i)] in the case of dependents traveling to obtain secondary education, one annual trip, or in the case of dependents traveling to obtain undergraduate college education, two annual trips, each way for each dependent of an employee [of the Department of State, of the International Communication

Agency, the Department of Justice, the Central Intelligence Agency, or the National Security Agency, or of the Agency for International Development, or (ii) one trip each way for each dependent of any other employee for the purpose of obtaining each type of education].⁸ An allowance payment under subparagraph (A) of this paragraph (4) may not be made for a dependent during the 12 months following his arrival in the United States for secondary education under authority contained in this subparagraph (B). Notwithstanding section 5921(6) of this title, travel expenses, for the purpose of obtaining undergraduate college education, may be authorized under this subparagraph (B), under such regulations as the President may prescribe, for dependents of employees who are citizens of the United States stationed in the Canal Zone.

§ 5925. Post differentials

(a) A post differential may be granted on the basis of conditions of environment which differ substantially from conditions of environment in the continental United States and warrant additional pay as a recruitment and retention incentive. A post differential may be granted to an employee officially stationed in the United States who is on extended detail in a foreign area. A post differential under this subsection may not exceed 25 percent of the rate of basic pay.

(b) Any employee granted a differential under subsection (a) of this section may be granted an additional differential for an assignment to a post determined to have especially adverse conditions of environment which warrant additional pay as a recruitment and retention incentive for the filling of positions at that post. An additional differential for any employee under this subsection—

- (1) may be paid for each assignment to a post determined to have such conditions;
- (2) may be paid periodically or in a lump sum; and
- (3) may not exceed 15 percent of the rate of basic pay of that employee for the period served under that assignment.

§ 5927. Advances of pay

Up to three months' pay may be paid in advance to an employee upon the assignment of the employee to a post in a foreign area.

§ 5928. Danger pay allowance

An employee serving in a foreign area may be granted a danger pay allowance on the basis of civil insurrection, civil war, terrorism, or wartime conditions which threaten physical harm or imminent danger

⁸ Section 510 of Public Law 96-53 struck out "one annual trip each way for each dependent of an employee of the Department of State or the United States Information Agency, or" and inserted in lieu thereof "(1) in the case of dependents traveling to obtain secondary education, one annual trip, or in the case of dependents traveling to obtain undergraduate college education, two annual trips, each way for each dependent of an employee of the Department of State, of the International Communication Agency, or of the Agency for International Development, or (ii).". Section 502 of Public Law 96-100 struck out "or the United States Information Agency," and inserted in lieu thereof the following: "the International Communication Agency, the Central Intelligence Agency, or the National Security Agency.". Section 4(h) of Public Law 96-132 inserted "the Department of Justice," after "the International Communication Agency,".

to the health or well-being of the employee. A danger pay allowance may not exceed twenty-five percent of the basic pay of the employee.

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CHAPTER 63—LEAVE

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SUBCHAPTER I—ANNUAL AND SICK LEAVE

§ 6301. Definitions

For the purpose of this subchapter—

(1) “United States”, when used in a geographical sense, means the several States and the District of Columbia; and

(2) “employee” means—

(A) an employee as defined by section 2105 of this title; and

(B) an individual employed by the government of the District of Columbia;

but does not include—

(i) a teacher or librarian of the public schools of the District of Columbia;

(ii) a part-time employee who does not have an established regular tour of duty during the administrative work-week;

(iii) a temporary employee engaged in construction work at an hourly rate;

(iv) an employee of the Panama Canal Commission when employed on the Isthmus of Panama;

(v) a physician, dentist, or nurse in the Department of Medicine and Surgery, Veterans' Administration;

(vi) an employee of either House of Congress or of the two Houses;

(vii) an employee of a corporation supervised by the Farm Credit Administration if private interests elect or appoint a member of the board of directors;

(viii) an alien employee who occupies a position outside the United States, except as provided by section 6310 of this title;

(ix) a “teacher” or an individual holding a “teaching position” as defined by section 901 of title 20;

(x) an officer in the executive branch or in the government of the District of Columbia who is appointed by the President and whose rate of basic pay exceeds the highest rate payable under section 5332 of this title;

(xi) an officer in the executive branch or in the government of the District of Columbia who is designated by the President, except a postmaster, United States attorney, or United States marshal;

(xii) [an officer who receives pay under section 866 of title 22] a chief of missions (as defined in section 102(a)(3) of the Foreign Service Act of 1980); or

(xiii) an officer in the legislative or judicial branch who is appointed by the President.
Notwithstanding clauses (x)-(xii) of paragraph (2), the term "employee" includes any member of the Senior Foreign Service or any Foreign Service officer (other than a member or officer serving as chief of mission or in a position in the Department of State which requires appointment by and with the advice and consent of the Senate) and any member of the Foreign Service commissioned as a diplomatic or consular officer, or both, under section 312 of the Foreign Service Act of 1980.

§ 6304. Annual leave; accumulation

(a) Except as provided by subsections (b), (d), (e), [and (f)] (f), and (g) of this section, annual leave provided by section 6303 of this title, which is not used by an employee, accumulates for use in succeeding years, until it totals not more than 30 days at the beginning of the first full biweekly pay period, or corresponding period for an employee who is not paid on the basis of biweekly pay periods, occurring in a year.

(g) *Annual leave accrued by a member of the Senior Foreign Service shall not be subject to the limitation on accumulation otherwise imposed by this section.*

§ 6305. Home leave; leave for Chiefs of Missions; leave for crews of vessels

(a) After 24 months of continuous service outside the United States, an employee may be granted leave of absence, under regulations of the President, at a rate not to exceed 1 week for each 4 months of that service without regard to other leave provided by this subchapter. Leave so granted—

- (1) is for use in the United States, or if the employee's place of residence is outside the area of employment, in its territories or possessions including the Commonwealth of Puerto Rico;
- (2) accumulates for future use without regard to the limitation in section 6304(b) of this title; and
- (3) may not be made the basis for terminal leave or for a lump-sum payment.

(b) The President may authorize leave of absence to [an officer] a chief of mission excepted from this subchapter by section 6301(2) (xii) of this title for use in the United States and its territories or possessions. Leave so authorized does not constitute a leave system and may not be made the basis for a lump-sum payment.

Subpart F—Labor-Management and Employee Relations

CHAPTER 71—LABOR-MANAGEMENT RELATIONS

SUBCHAPTER I—GENERAL PROVISIONS

§ 7103. Definitions; application

(a) For the purpose of this chapter—

(1) "person" means an individual, labor organization, or agency;

(2) "employee" means an individual—

(A) employed in an agency; or

(B) whose employment in an agency has ceased because of any unfair labor practice under section 7116 of this title and who has not obtained any other regular and substantially equivalent employment, as determined under regulations prescribed by the Federal Labor Relations Authority;

but does not include—

(i) an alien or noncitizen of the United States who occupies a position outside the United States;

(ii) a member of the uniformed services;

(iii) a supervisor or a management official;

(iv) an officer or employee in the Foreign Service of the United States employed in the Department of State, [the Agency for International Development, or] the International Communication Agency, the United States International Development Cooperation Agency, the Department of Agriculture, or the Department of Commerce; or

(v) any person who participates in a strike in violation of section 7311 of this title;

CHAPTER 83—RETIREMENT

SUBCHAPTER III—CIVIL SERVICE RETIREMENT

§ 8332. Creditable service

(a) The total service of an employee or Member is the full years and twelfth parts thereof, excluding from the aggregate the fractional part of a month, if any.

(b) The service of an employee shall be credited from the date of original employment to the date of separation on which title to annuity is based in the civilian service of the Government. Credit may not be allowed for a period of separation from the service in excess of 3 calendar days. The service includes—

(1) employment as a substitute in the postal field service;

(2) service in the Pan American Sanitary Bureau;

(3) subject to sections 8334(c) and 8339(i) of this title, service performed before July 10, 1960, as an employee of a county committee established under section 590h(b) of title 16 or of a committee or an association of producers described by section 610(b) of title 7;

(4) service as a student-employee as defined by section 5351 of this title only if he later becomes subject to this subchapter;

(5) a period of satisfactory service of a volunteer or volunteer leader under chapter 34 of title 22 only if he later becomes subject to this subchapter;

(6) employment under section 709 of title 32 or any prior corresponding provision of law;

(7) a period of service of a volunteer under part A of title VIII of the Economic Opportunity Act of 1964, or a period of service of a full-time volunteer enrolled in a program of at least one year's duration under part A, B or C of title I of the Domestic Volunteer Service Act of 1973 only if he later becomes subject to this subchapter;

(8) subject to sections 8334(c) and 8339(i) of this title, service performed on or after February 18, 1929, and before noon on January 3, 1971, as a United States Capitol Guide; **[and]**

(9) subject to sections 8334(c) and 8339(i) of this title, service as a substitute teacher for the government of the District of Columbia after July 1, 1955, if such service is not credited for benefits under any other retirement system established by a law of the United States **[.]**; *and*

(10) *periods of imprisonment of a foreign national for which compensation is provided under section 410 of the Foreign Service Act of 1980, if the individual (A) was subject to this subchapter during employment with the Government last preceding imprisonment, or (B) is qualified for an annuity under this subchapter on the basis of other service of the individual.*

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CHAPTER 85—UNEMPLOYMENT COMPENSATION

* * * * *

SUBCHAPTER I—EMPLOYEES GENERALLY

§ 8501. Definitions

For the purpose of this subchapter—

(1) "Federal service" means service performed after 1952 in the employ of the United States or an instrumentality of the United States which is wholly or partially owned by the United States, but does not include service (except service to which subchapter II of this chapter applies) performed—

(A) by an elective official in the executive or legislative branch;

(B) as a member of the armed forces;

(C) by **[Foreign Service personnel for whom special separation allowances are provided under chapter 14 of title 22]** *members of the Foreign Service for whom payments are provided under section 609(b)(1) of the Foreign Service Act of 1980;*

* * * * *

SUPPLEMENTAL VIEWS OF REPRESENTATIVE SCHROEDER

H.R. 6790, as reported by Subcommittee, provides a far better method of providing pension benefits to former spouses of members of the Foreign Service than does the bill reported from the full Post Office and Civil Service Committee. In adopting the amendment offered by Mr. Ford of Michigan, by a vote of 11 to 10, the Committee weakened the mechanism for providing retirement security for former spouses. At the same time, however, the Committee affirmed the basic policy that pension benefits should be split at the time of divorce, based on the equity of the situation.

The need to provide pension benefits to former spouses of members of the Foreign Service was clearly spelled out in the hearings held on the Foreign Service Act. First, there is a general need to provide these benefits to the spouses of all Federal employees. In the private sector, most employees are required to participate in the Social Security system. Non-working spouses gain retirement benefits, based on the contributions of their working spouses. In the Federal sector, Social Security is not mandatory and the retirement systems for Federal workers do not provide retirement benefits for spouses. Hence, in traditional role model families, i.e., where the husband works for a salary and the wife works for free in the house, a death of the husband or a divorce could leave the wife penniless.

Second, the nature of the Foreign Service makes this need far more acute. All members of the Foreign Service are subject to frequent and continual rotation throughout their careers. The spouse has no opportunity to build an independent career, if he or she accompanies the member of the Service. Following death or divorce, the spouse has insufficient work experience to find a job, no retirement benefits in his or her own right, and no right to a portion of the benefits of the member of the Service.

Third, wives of Foreign Service officers have a special claim to this protection. Up until recently, wives of Foreign Service officers were rated on their husband's evaluation report on their performance of representational duties. In effect, Foreign Service wives were impressed into service as unpaid representatives of the United States Government. This tradition of unpaid service continues, although the appraisals are no longer officially made.

The need is clear; the size of the problem is growing. No-fault divorce produces over a million divorces a year, nationwide. The ease with which these divorces can be achieved has left thousands of women without adequate economic protection. Indeed, only 5 percent of divorcees over aged 30 receive alimony and the mean level of child support received is a puny \$2,430 per year.

H.R. 6790, as reported by Subcommittee, provided for a pro-rata division of retirement and survivor's benefits, based on the number of

years of marriage, between the member of the Foreign Service and the former spouse. This pro-rata division was a presumption, subject to affirmation, modification, or vitiation by the state family law court. The bill gave the current spouse and former spouses of over 10 years a right to sign off before the participant waived all survivor's benefits. Also, former spouses of all participants in the Foreign Service retirement system, whether active duty or retired, would be able to use this law.

The Ford amendment changes these provisions. Rather than establishing a presumption for division, the Ford amendment merely permits courts to divide both retirement and survivor's benefits without any Federal guidance. In a world of universally competent judges and well-informed domestic relations lawyers, the presumption for pro-rata distribution would be unnecessary. Recent experience with reforms in divorce law makes it very clear that self-executing legislation, such as this pro-rata distribution presumption, is essential to assure that the law is followed.

The Ford amendment also eliminates the right of a current former spouse to sign off on a waiver of survivor's benefits. By so doing, the Ford amendment may render the supposed ability of a former spouse to share in survivor's benefits a hollow right. Under the Ford amendment, the member of the Foreign Service retains the unilateral right to cut off whatever share of survivor's benefits a spouse may have thought he or she had.

Additionally, the Ford amendment only applies to future divorces and future retirements. This leaves numerous former spouses of Foreign Service officers destitute. By using this effective date, the Ford amendment cuts off from benefits those already divorced.

The Ford amendment also does not remove the prohibition on a Foreign Service retiree assigning his or her survivor's benefits to a former spouse. H.R. 6790 permitted this freedom of choice to the retiree.

The most important point is that both H.R. 6790, as reported by Subcommittee, and the bill as reported from full committee adopt the policy that retirement and survivor's benefits should be split between the member of the Foreign Service and his or her spouse, based on the equity of the situation. The language in the Subcommittee bill is a far more effective way of accomplishing that policy than is the Ford amendment.

SUPPLEMENTAL VIEWS OF HON. JIM LEACH

By consolidating existing legislation pertaining to the Foreign Service and making several important improvements, H.R. 6790 provides a significant personnel and management framework for the foreign affairs agencies as we enter the decade of the 1980's. It ends the confusion caused by the present multiple personnel systems utilized by the foreign affairs agencies by requiring that virtually all American employees choose either the Civil Service or, if they are available for worldwide assignments, the Foreign Service.

The bill enhances the objective of upward mobility in the Foreign Service by (1) requiring the Secretary to base promotion into and retention in the Senior Foreign Service upon systematic long-term projections of personnel flows and needs which take into account a regular, predictable flow of talent upward and (2) providing authority to the Secretary to establish a maximum time in class period of at least 3 years for career members of the Senior Foreign Service following the expiration of which they may continue to serve only under limited extension of their career appointments which do not exceed 5 years. This significant management tool, if properly and wisely administered, should help relieve the impaction problem which has impeded upward flow in the Foreign Service in recent years without jeopardizing the ability of highly-skilled and experienced officers who chose to compete in the Senior Foreign Service to continue to serve in positions of increasing responsibility.

An area in which the bill could be strengthened would be the statutory establishment of an Advisory Commission on Ambassadorial Appointments. The purpose of such a commission would be to advise the President on the qualifications of potential nominees for appointment as chief of mission. It would also be required, in the case of a nominee who is not a career member of the Foreign Service, to provide the Senate Foreign Relations Committee with a written report regarding the qualifications of the nominee to perform the duties of chief of mission at the particular mission involved. Dissenting or additional views of any member of the commission could be included. The commission would consist of a chairperson and 14 other members appointed by the President from among individuals who are not government employees and who are broadly representative of the American people. It should include at least two former chiefs of mission who are retired career members of the Foreign Service.

The present Administration established, by Executive Order 11920 dated February 5, 1977, a Presidential Advisory Board on Ambassadorial Appointments. The purpose of the Board is "to provide recommendations to the President and to the Secretary of State on the qualifications of individuals whose names have been submitted to the Board as prospective nominees for an ambassadorial post for which non-career members are being considered."

The existing Board is a notable step forward in establishing an orderly mechanism for screening the many non-career individuals who seek an ambassadorial appointment. Establishing an Advisory Commission on Ambassadorial Appointments statutorily in H.R. 6790 would recognize the importance of the present Board and would indicate the importance that the Congress attaches to the appointment of qualified individuals to ambassadorial positions. In the past there have been too many instances when clearly unqualified individuals were, for domestic political reasons, nominated to serve as American Ambassadors. Certainly, the great majority of non-career ambassadors have been highly qualified individuals who have served our nation's foreign policy well. But to avoid in the future the mistakes of the past, it is important that incentives be created to enhance the prospect that only qualified individuals represent our country as Ambassadors. A statutorily established advisory commission would assure the survival and improve the workings of the existing Board without in any way interfering with the President's constitutional authority to nominate ambassadors.

A second area in which H.R. 6790 could be improved relates to the uniform application of the personnel authorities in the legislation by the various agencies which may utilize the Act, especially with respect to the Senior Foreign Service. The Departments of State, Commerce and Agriculture and ICA and AID are authorized by the bill to utilize the Foreign Service personnel system for employees available for worldwide service. The bill, however, fails to insure that the manner in which these agencies use this authority will be consistent and uniform. Sections 203 and 204 contain language which represents the maximum regarding compatibility and uniform administration of personnel policies which the concerned agencies were able to negotiate among themselves.

Compatibility of personnel policies is particularly important for the Senior Foreign Service in order to ensure that the national interest and not the parochial interests of individual agencies is served. The SFS in each agency will constitute a corps of highly qualified and experienced officers within the agency. Yet the language presently in H.R. 6790 runs the risk of each agency establishing its own criteria for admission into the SFS, performance pay, and promotion and retention in the SFS. Rather than establishing a system in which the very best executive talents can be encouraged and drawn upon by all agencies, it is virtually certain that the bill will result in no change in the present situation of minimal interchange of senior executives among the foreign affairs agencies. Failure to establish a single Senior Foreign Service in this legislation would represent a serious missed opportunity to make a timely innovation in the administration of the Foreign Service.

This deficiency could be remedied by adopting language designed to promote interagency transfer of members of the Senior Foreign Service by requiring (1) a uniform set of regulations affecting standards for evaluation of individuals with respect to promotion into and within the SFS, performance pay, classification of positions, retirement based on relative performance and precepts to be employed by evaluation boards; and (2) a single set of rules governing the

length of the trial period of a SFS career candidate, the period in which a member of the Foreign Service may be considered for promotion into the SFS, and time in class. It is believed that the application of more uniform standards will aid transferability of members of the SFS by assuring each agency that SFS members of a particular class have comparable qualifications and experience.

It would not be necessary to affect the authority of the heads of the individual agencies to make decisions regarding the implementation of the law or regulation. Agency heads could retain final control over which individuals are promoted, which receive performance pay, the size of performance pay, who is employed by that agency and similar matters. Assignments would reflect agreement between the parent agency, the receiving agency, and the individual.

In order to assure uniformity in the rules applicable to the Senior Foreign Service, the Secretary of State should be given authority, after interagency consultation, to promulgate regulations, specify time limits, and establish precepts relating to various aspects of the Senior Foreign Service.

The idea of a single set of rules for the Senior Foreign Service would assure much greater uniformity within the Senior Foreign Service than is presently possible under H.R. 6790. More uniform standards would stimulate a freer flow of senior personnel among the foreign affairs agencies. It would assure each agency that a member of the Senior Foreign Service who has attained a particular rank has had appropriate experience and has been subject to standards applied to all SFS members of the same rank.

Increased exchange of personnel would also benefit members of the Senior Foreign Service, by providing an opportunity for career experiences broader than that available if service is confined to a single agency. By making it clear that a talented officer may rise to such senior positions as chief of mission no matter in what agency he begins his career, it should encourage better quality applicants in all fields and not give the Department of State a corner on the market of would-be ambassadorial talent.

Under this proposal the Secretary of State would not have classification or assignment authority over other agency personnel. No agency would be required to assign an officer to another agency against the wishes of the officer of the parent agency. No agency would be required to take an officer it considered unacceptable. Agency heads would retain final control over which individuals are promoted, which receive performance pay, and the size of performance pay awards.

A serious—but unsuccessful—effort was undertaken to amend H.R. 6790 to improve uniformity among the agencies in administering the Senior Foreign Service. It is regrettable that the Administration was not sufficiently far-sighted to support these amendments. Rather than speaking with a single, authoritative voice, the Administration acquiesced in AID, ICA, Agriculture and Commerce opposing this progressive change. These agencies, however, have formally undertaken to move toward maximum feasible compatibility in administering the Senior Foreign Service. In its oversight role, the Congress should pay special attention to seeing that this commitment is honored.

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Finally, Foreign Service staff employees deserve greater recognition for their work abroad. They spend most of their careers in foreign posts and perform under conditions quite different from Civil Service employees with comparable job descriptions. For example, unlike in the Civil Service, a Foreign Service secretary or communicator is expected to be a representative of our country abroad, to be on good behavior outside the office, to be on call to work extra hours, to pass security and medical clearances, to move every two or three years, to learn foreign languages, to be able to adapt to foreign environments, to work successfully in conditions of isolation, climatic extremes, political or cultural hostility and, as we have seen in Tehran, to risk being taken hostage by terrorist groups. Recent difficulties which the State Department has encountered in filling secretarial and communicator vacancies are worrisome. It is therefore incumbent on the Congress and the Administration to pay increased attention to the problems of Foreign Service staff employees, taking fully into account the demanding and relatively unique overseas factors which they face during their careers.

JIM LEACH,
Member of Congress.

SUPPLEMENTAL VIEWS ON H.R. 6790, FOREIGN SERVICE ACT OF 1980

The Foreign Service Act of 1980, H.R. 6790, as reported by the Committee on Post Office and Civil Service is a basically sound and progressive legislative package to improve the foreign service personnel system.

Nevertheless, it is not without its blemishes.

To further perfect this legislation we suggest and support three amendments which will strengthen the bill and provide management with the means and flexibility to properly administer the Foreign Service.

First, we recommend an amendment to cut \$19 million from the projected first year payroll costs under the bill as reported. An amendment is needed to restore to the President the authority to administratively establish the proper linkage between the Foreign Service pay schedule and the General Schedule under the pay comparability process. The bill as presently written is at odds with sound pay comparability practices and would create an unreasonable imbalance between the two pay systems, in addition to burdening the American taxpayer with unnecessary payroll costs.

Second, an amendment to remove an unwarranted restraint on management in dealing with the important issue of extending limited career appointments of Foreign Service officers. As written, the bill would permit the extension of an expired term only when recommended by a selection board. In practice, it is necessary for the Secretary of State to base his judgment for retention of an officer on many factors, among which would be the views of the selection board. This provision in the bill needs to be corrected to avoid having the tail wag the dog.

Third, we recommend an amendment to restore to the Peace Corps its traditional and well-tested authority to appoint headquarters staff under the Foreign Service system, regardless of their world-wide availability. To require that the Peace Corps be split into General Schedule and Foreign Service appointments is impractical with such a small workforce. The Peace Corps was established as an agency in which employees serve a limited term without the prospect of job security. The agency has emphatically stated it desires to continue to operate as originally planned by the Congress.

For these reasons, adoption of these amendments is in the best interest of the Foreign Service.

The Foreign Service, as has been especially exemplified in recent years, is of critical importance in the execution of our foreign policy. Therefore, it is incumbent upon the House to act promptly in approv-

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ing this newly revamped personnel system which will serve the Foreign Service well in the future.

EDWARD J. DERWINSKI, *Member of Congress.*

TOM CORCORAN, *Member of Congress.*

GENE TAYLOR, *Member of Congress.*

WILLIAM E. DANNEMEYER, *Member of Congress.*

CHARLES PASHAYAN, Jr., *Member of Congress.*

JAMES A. COURTER, *Member of Congress.*

BENJAMIN A. GILMAN, *Member of Congress.*

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